

**IN THE COURT OF  
APPEAL AT  
NYERI**

**(CORAM: ALI-ARONI, J.A. (IN  
CHAMBERS) CIVIL APPLICATION NO.**

**E157 OF 2025 BETWEEN**

**ELIJAH MURERWA ..... APPLICANT/INTENDED**

**APPELLANT AND**

**KENYA WILDLIFE SERVICE.....RESPONDENT**

*(Being an application for leave to file an appeal out of time  
against the Judgment of the High Court of Kenya at Meru (Omido,  
J.) delivered on 23<sup>rd</sup> January, 2025*

*in*

***HCCA No. E087 of 2022)***

**\*\*\*\*\***

**RULING**

1. Before the Court is an application by way of a notice of motion dated 1<sup>st</sup> October 2025, brought under **Article 159(2)(d)** of the Constitution, **sections 3A and 3B** of the Appellate Jurisdiction Act, **rule 4 and 5(2)(b)** of the Court of Appeal Rules 2022 (the Rules), seeking leave to file an appeal out of time.
2. The application is predicated on the grounds on the face of the application and the affidavit of the applicant, **Elijah Murerwa** sworn on 1<sup>st</sup> October 2025, where he deposed that

judgment was entered for the respondent against the applicant on 23<sup>rd</sup> January 2025; on the same day the letter bespeaking the

certified copies of the proceedings and judgment was written to the deputy registrar Meru High Court; the notice of appeal was lodged on 6<sup>th</sup> February 2025; that the delay in obtaining copies of the proceedings and judgement caused delay in filing the appeal on time; the applicant is desirous of appealing against the entire judgment; there are substantial grounds of appeal as outlined in the draft memorandum attached to this application; it would be fair and just to grant the orders sought; failure to grant the orders sought will result in irreparable loss and damages.

3. Learned counsel for the applicant filed submissions and a list of authorities both dated 3<sup>rd</sup> December 2025 and argued that the Court has the discretion to grant an extension of time under **Article 159(2)(d)** of the Constitution of Kenya, which promotes justice without undue regard to procedural technicalities, and under **sections 3A and 3B** of the Appellate Jurisdiction Act. Additionally, and **rule 4** of the Rules, grants the Court discretion to extend time where sufficient cause is shown.
4. Counsel further attributes reasons for the delay to the late receipt of certified copies of the proceedings and judgment. Further counsel asserted that the intended appeal has merit; the grounds raise serious issues, specifically regarding the High Court's failure to award damages for pain, suffering, and loss of amenities, despite the existence of unchallenged medical evidence.

5. Counsel contended that denying leave would infringe upon the applicant's constitutional right to challenge a decision that contains errors of law and facts, potentially leading to a miscarriage of justice. Counsel further stated that the respondent has already been notified of the intention to appeal via the notice of appeal and will have a chance to defend the appeal once it is filed, and therefore, no prejudice will be suffered if the extension is allowed.
6. Despite service of the hearing notice, the respondent neither filed a response to the application nor submissions.
7. I have considered the application, the supporting affidavit and the applicant's submissions. The issue for determination is whether to grant leave to the applicant to file the record of appeal out of time.
8. **Rule 4** of the Rules allows this Court to exercise discretion to extend the time limited by the Rules for doing any act authorised or required by the Rules. It provides that; -  

***The Court may, on such terms as may be just, by order, extend the time limited by these Rules, or by any decision of the Court or of a superior court, for the doing of any act authorized or required by these Rules, whether before or after the doing of the act, and a reference in these Rules to any such time shall be construed as a reference to that time as extended.***
9. In ***Abdul Azizi Ngoma vs. Mungai Mathayo [1976] KLR 61, 62***, this Court of Appeal held:

***“We would like to state once again that this court’s discretion to extend time under rule 4 only comes into existence after ‘sufficient reason’ for extending time has been established and it is only then that other considerations such as the absence of any prejudice and the prospects or otherwise of success in the appeal can be considered.”***

10. The applicant has demonstrated that the delay in filing the record of appeal on time was due to the late receipt of the certified copies of the proceedings and the judgment. This explanation, as sufficient as it seems, has left the Court wondering why counsel did not copy the letter bespeaking the proceedings and the copy of judgment to the respondent’s counsel to fall under the proviso to **rule 84(1)** of the Rules, which would have saved judicial time which is increasingly becoming scarce. The rule provides as follows:

***Subject to rule 118, an appeal shall be instituted by lodging in the appropriate registry, within sixty days after the date when the notice of appeal was lodged—***

***(a) a memorandum of appeal, in four copies;***

***(b) the record of appeal, in four copies;***

***(c) the prescribed fee; and (d) security for the costs of the appeal;***

***Provided that where an application for a copy of the proceedings in the superior court has been made in accordance with sub-rule (2) within thirty days after the date of the decision against which it is desired***

***to appeal, there shall, in computing the time within which the appeal is to be instituted, be excluded such time as may be certified by the registrar of the superior court as having been required for the preparation and delivery to the appellant of such copy.***

11. Secondly, the delay between the 4<sup>th</sup> of July 2025, when the certificate of delay was issued, and the filing of the application subject of this ruling, on 1<sup>st</sup> October 2025, 3 months has not been explained. These are obviously mistakes of counsel and I will not visit them on the party. Since the application remains unopposed, and in the interest of justice, I will grant the extension to file and serve the record of appeal. The same should be filed and served within the next fourteen (14) days of the date hereof.

**Dated and delivered at Nyeri this 11<sup>th</sup> day of December, 2025.**

**ALI-ARONI**

.....  
**JUDGE OF APPEAL**

*I certify that this is  
a true copy of the  
original.*

*Signed*  
**DEPUTY REGISTRAR**