

IN THE COURT OF APPEAL
AT NAKURU

(CORAM: GACHOKA, J.A. - IN CHAMBERS)
CIVIL APPEAL (APPLICATION) NO. E121 OF
2024

BETWEEN
DAVID MWANGI WANDETO.....APPLICANT

AND

STEPHEN NJUGUNA KIRAGU.....1ST
RESPONDENT JOSEPH MAINA MWANGI.....
.....2ND RESPONDENT

(An application for leave to file a notice of appeal out of time from the ruling and order of the High Court at Nakuru (S.M. Muhochi, J.) delivered on 29th October 2024

in

HCCC NO. E030 OF 2021)

RULING

1. The Notice of Motion dated 10th December 2024 and filed on 19th December 2024 has supplicated the provisions of Articles 159 (2) (a), (b), (d) and (e) of the Constitution, sections 3, 3A and 3B of the Appellate Jurisdiction Act and rules 4, 43 and 49 of the Court of Appeal Rules 2022 seeking for orders that:

a) THAT this Honourable Court be pleased to grant leave to the applicant to file his notice of appeal out of time.

b) THAT the costs of this application be provided for.

2. The application is supported by the grounds on the body of the Motion and the supporting affidavit of Paschal Peter Oyuko

Mbeche, the applicant's counsel. The gist of the Motion is that
the

applicant lodged an application for review before the Nakuru High Court in **HCCC No. E030 of 2021** dated 7th June 2024. In his ruling dated 29th October 2024, *Muhochi, J.* dismissed the application.

3. The applicant is aggrieved by those findings hence the application.

He stated that he prepared the notice of appeal dated 5th November 2024 but inadvertently failed to file the same. It was explained that the delay was occasioned by inadvertent power and internet outages experienced by his counsel. The applicant then forgot to file the notice of appeal and only realized that it was missing when it was preparing the record of appeal. He maintained that the application was filed with clean hands.

4. The applicant prayed that the application be allowed for the following reasons: the mistake of counsel should not be visited on the applicant; that the intended appeal raised substantial and arguable points of law and facts, with a high likelihood of success; that this Court be pleased to offer the applicant herein an opportunity to prosecute the intended appeal by exercising its discretion to extend time; and the respondents would not suffer any prejudice if the orders sought are granted.

5. The 1st respondent opposed the application. He filed a replying affidavit sworn on 21st November 2025. He deposed that no satisfactory reasons had been furnished by the applicant to justify why this Court ought to allow the application. Finally, he deposed that it was incumbent on the applicant to demonstrate, by way of a draft memorandum of appeal, that the appeal was arguable. He prayed that the application be dismissed.
6. The application was heard on the basis of the parties' written submissions. The applicant filed written submissions dated 10th December 2025. He prayed that the application be allowed. The 1st respondent filed written submissions and case digest both dated 9th December 2025. He prayed that the application be dismissed with costs.
7. I have considered the application and the response, examined the submissions of the parties and analyzed the law. The applicant seeks to file his notice of appeal out of time. The applicant has urged this Court to invoke the discretion set out in rule 4 of the Court of Appeal Rules 2022 which is wide and not exhaustive. In determining an application of this nature, this Court is alive to the factors taken into account namely

the merit of the appeal, the
prejudice, if any, to be suffered by the respondent and the period

and length of delay. [See **Paul Wanjohi Mathenge vs. Duncan Gichane Mathenge** [2013] eKLR].

8. The applicant seeks an extension of time to file his notice of appeal late, citing power and internet outages experienced by his advocates as the cause for the delay. He ought to have filed by 12th November 2024 but only lodged the present application on 19th December 2024. I have considered the application, the supporting documents and the submissions. The applicant has explained the reason for the delay in lodging the notice of appeal on time. The applicant pleads an honest mistake. This is a feeble excuse, but I note that this application was filed within a month or so. This is not an inordinate delay, and in the interest of justice, I allow the applicant to have his day in Court.
9. Therefore, I order the applicant to file his notice of appeal within 7 days from the date of this order. The costs of the application shall abide the outcome of the appeal.

Dated and delivered at Nakuru this 16th day of December 2025.

M. GACHOKA C.Arb, FCIArb.

.....
JUDGE OF APPEAL

I certify that this is a

true copy of the original.
Signed.

DEPUTY REGISTRAR