

REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
MISC APPLICATION NO E402 OF 2025

CROWN BUS LIMITED.....
APPLICANT

=VERSUS=

AGNES NASIMIYU
WANGUKE.....RESPONDENT

Coram: Before Justice R. Nyakundi
M/s KRK Advocates LLP
M/s Kennedy Ngaira & Ass. Advocates

RULING

1. Before this court is a Notice of Motion brought under certificate of urgency seeking the following orders:
 - a. *Spent*
 - b. *THAT the Honourable Court be pleased to extend time for lodging of an Appeal against the decision of the Hon. P Areri (SPM) delivered on 16th October, 2025 in Eldoret Cmcc No.681 of 2019-(Agnes Nasimiyu-vs-Crown Bus Service Ltd).*
 - c. *THAT the Draft Memorandum of Appeal dated 24th November, 2025 be deemed as properly filed upon payment of the requisite Court fees.*
 - d. *THAT pending the hearing and determination of the application herein, there be a stay of execution of the decision of the Hon. P Areri (SPM) delivered on 16th October, 2025 in EldoretCmcc No. 681 of 2019-Agnes Nasimiyu-vs-Crown Bus Service Ltd and of all subsequent order spending the hearing and determination of the Application herein. CIVIL MISC NO. E402 OF 2025*
 - e. *THAT the costs of the present application do abide by the outcome of the Reference.*
2. *The application is made on the following grounds;*

- a. *That the judgement delivered on 16th October 2025 in Eldoret CMCC 681 OF 2019*
- b. *That the Applicant being dissatisfied with the judgement has just but instructed their advocates to institute an Appeal against the said judgement*
- c. *That the judgement was delivered on 19.10.2025, however the Applicant had to obtain a copy and further hold deliberations with their management, insures as well as advocates before reaching a decision to appeal this matter hence the delay in filing this appeal. As a result we were not able to get timely instructions on this appeal*
- d. *That the appellant/applicant being dissatisfied with the judgment has just but instructed its advocates to institute an appeal against the said judgement.*
- e. *That the judgement was delivered on 19th October 2025 by Hon P Areri (SPM) however the Applicant insures was undergoing internal strife at management level which prompted the intervention and/or an audit by the Insurance Regulatory Authority hence a difficulty in obtaining proper and express instructions on time*
- f. *THAT due to the audit, communication with insurers was strained and/or broken down hence a delay in conducting deliberations and issuing of instructions herein for purposes of instituting an Appeal*
- g. *THAT time period in which the Judgment dated 19/10/2025 can be appealed according to statute lapsed on 18th November, 2025 hence the need to seek an extension of time within which to lodge this instant appeal and have it deemed as properly filed*
- h. *THAT upon the easing of the internal strife at management level, 8 days had lapsed after the delivery of the judgment whereupon instructions were issued to institute an Appeal.*
- i. *THAT delay in filing this appeal was not deliberate and the same is excusable.*

- j. THAT the 30 days stay of execution granted by the trial court has since lapsed and unless Stay of Execution is granted the Appellant/Applicant's Application and consequently the intended damage.*
 - k. THAT the Appellant/Applicant has just but issued instructions to their advocates to appeal the said judgment which intended appeal has high chances of success.*
 - l. THAT The Appellant/Applicant is reasonably apprehensive that the Respondent, as Decretal court has lapsed several days before the lodging of this application.*
 - m. THAT the Application has been brought without unreasonable or undue delay.*
 - n. THAT the trial court did not grant any orders of stay of execution of the Judgment and unless Stay reference/Appeal will be rendered nugatory and the Applicant will suffer irreparable loss and damage.*
 - o. THAT the applicant has just but issued instructions to their advocates to appeal to the said judgement which intended appeal has high chances of success.*
 - p. THAT the Application has been brought without unreasonable or undue delay*
3. The Application is annexed by a sworn Affidavit by the Applicant who states as follows;
- i. THAT I am the Fleet Manager of the Applicant Company hence duly authorized and duly competent to swear this Affidavit*
 - ii. THAT I am informed by our advocates on record which information I verily believe to be true that a judgment was delivered was delivered on 19th October, 2025 in Eldoret Cmcc No. 681 of 2019- (Agnes Nasimiyu -vs- Crown-Bus Service Ltd) whereby the Respondent was awarded a Net Award of Kshs. 2, 816, 187/-.(Annexed herewith and marked as PR-1' is a copy of the Judgment)*

- iii. *THAT being dissatisfied with the Judgment, we have just but instructed our Advocates to institute an Appeal against the said judgment and the delay in issuing instructions is because we had to obtain a copy and further, hold deliberations with the management, insurers as well as our advocates before reaching a decision to appeal this matter hence the delay in filing this appeal. As a result we were not able to issue timely instructions on this appeal. (Annexed herewith and marked as PR-2' is a copy of the Draft Memorandum of Appeal)*
- iv. *THAT I am further advised by our Advocates on record information which I deem as true that the time period in which the Judgment dated 19th October, 2025 can be appealed according to statute lapsed on 18th November,-2025 hence the need to seek leave to appeal out of time.*
- v. *THAT I am advised that the time period in which the Judgment dated 19/10/2025 can be appealed according to statute lapsed on 18th November, 2025 hence the need to seek an extension of time within which to lodge this instant appeal and have it deemed as properly filed.*
- vi. *THAT upon the easing of the internal strife at management level, 8 days had lapsed after the delivery of the judgment whereupon instructions were issued to institute an Appeal.*
- vii. *THAT I am further advised by our Advocates on record information which I deem as true that unless Stay of Execution is granted, an enlargement of time within which to file the Appeal allowed and this instant application and the intended Appeal will be rendered nugatory and the Applicant company stands to suffer irreparable loss and damage as it will be compelled to honour a judgment that was grossly over-assessed hence occasioning a miscarriage of justice.*
- viii. *THAT I am further advised by our counsels on record that the delay of eight days herein in filing the application herein is not*

inordinate and as such, the same has been reasonably explained.

- ix. THAT we have just but issued instructions to our advocates to appeal the said Judgment.*
- x. THAT I am informed by our advocates on record which information I verily believe to be true that the intended Memorandum of Appeal raises pertinent issues and has a high chance of success. (Please refer to annexure PK -2)*
- xi. THAT I am reasonably apprehensive that the Respondent, as Decree Holder, may proceed and levy execution against ourselves as the stay of execution of thirty days has since lapsed.*
- xii. THAT the Judgment/decree is of substantial amount and we are apprehensive that if the Respondent is paid she may deal with the same in a manner prejudicial to the Applicant and if the intended Appeal is successful, the applicant might not be able to recover the same from the Respondent.*
- xiii. THAT the Applicant and/or its insurers is ready and willing to either Deposit a half of the monies in a joint interest earning account or a deposit in court as a condition for stay pending determination of the intended Appeal as the appeal challenges the issue of quantum.*
- xiv. THAT this Application is made in good faith and will not occasion any prejudice to the Respondent.*
- xv. THAT I know of my knowledge this application has been brought promptly and without unreasonable delay.*
- xvi. THAT I know of my own knowledge that the delay in filing the Reference is excusable and has been reasonably explained.*
- xvii. THAT in the circumstances, I pray that the Orders sought in the application hereof be granted as prayed.*
- xviii. THAT what is deponed to herein above is true to the best of my knowledge, information and belief.*

DECISION

4. This Application arises from the initial directions issued on 3rd December 2025. From the CTS portal there is non-compliance for the order on filing of submissions to canvass the substantive Notice of Motion seeking enlargement of time upon which an appeal should be filed against the decision on Hon. P. Areri on 16th October 2025. As the case protocols stand there is sufficient material in the form of an Affidavit sworn by one Peter Ruto seeking the appropriate remedies to initiate the process of filing the intended appeal. For reasons which are not very clear from the record the Respondent has not filed any Replying Affidavit or Grounds of Opposition. This matter was certified urgent and within the Performance Management Measurement Understanding the delivery time of ruling is set at 30 days from the date of certification as an urgent matter.
5. This being a Civil Matter the time to lodge an appeal is set at 30 days from the date of the impugned decision of the ruling or judgement. However, in the same provisions under **Section 79 (g) of the Civil Procedure Act** the court is empowered to enlarge time based on sufficient cause explaining the delay for non-compliance with the statutory timelines. The Court of Appeal and other Superior Courts have interpreted the proviso as herein demonstrated in the following case law; In **Paul Wanjohi Mathenge vs Duncan Gichane Mathenge [2013] eKLR** the Court of Appeal while referring to other authorities observed (at paragraph12):
*“The discretion under Rule 4 is unfettered, but it has to be exercised judicially, not on whim, sympathy or caprice. I take note that in exercising my discretion I ought to be guided by consideration of the factors stated in previous decisions of this court including, but not limited to, the period of delay, the reasons for the delay, the degree of prejudice to the respondent and interested parties if the Application is granted, and whether the matter raises issues of public importance. In **Henry Mukora Mwangi vs Charles Gichina Mwangi- Civil Application No. Nai 26 of 2004**, this court held;*

*It has been stated time and again that in an application under rule 4 of the Rules the learned single Judge is called upon to exercise his discretion which discretion is unfettered. It may be appropriate to re-emphasize this principle by referring to the decision in **Mwangi v Kenya Airways Ltd. [2003] KLR 486** in which this Court stated; "Over the years, the Court has, of course set out guidelines on what a single Judge should consider when dealing with an application for extension of time under rule 4 of the Rules. For instance, in **Leo Sila Mutiso -vs-Rose Hellen Wangari Mwangi-Civil Application No Nai. 255 of 1997 (unreported)**, the Court expressed itself thus;*

"It is now well settled that the decision whether or not to extend the time for appealing is essentially discretionary. It is also well settled that in general the matters which this court takes into account in deciding whether to grant an extension of time are: first, the length of the delay; secondly, the reason for the delay; thirdly (possibly), the chances of the appeal succeeding if the application is granted; and, fourthly, the degree of prejudice to the respondent if the application is granted."

6. The Supreme Court of Kenya in the case of **Salat vs Independent Electoral & Boundaries Commission & 7 Others (2014) KLR** provided the principles that a court should consider in exercise of such discretion;

1. Extension of time is not a right of a party. It is an equitable remedy that is only available to a deserving party at the discretion of the court.

2. A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the court

3. Whether the court should exercise the discretion to extend time, is a consideration to be made on a case to case basis;

4. Whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the Court;

5. Whether there will be any prejudice suffered by the respondents if the extension is granted;

6. Whether the application has been brought without undue delay; and

7. Whether in certain cases, like Election Petitions, public interest should be a consideration for extending time.

7. There is no doubt from the affidavit evidence that the Applicant has explained himself on the surrounding circumstances which occasioned the delaying meeting the time targets to file an appeal within a period of 30 days. It is for these reasons I exercise judicial discretion to extend time for a further 30 days from today's ruling. In compliance with this order the intended Appellant shall file the Record of Appeal accompanied with Submissions. The same shall be served upon the Respondent who shall in turn file rejoinder Submissions within 21 days from the date of service. With these directions a status conference, be held on 18/2/2026.

8. The costs of this Application to abide the outcome of the Appeal.

**GIVEN UNDER MY HAND AND THE SEAL OF THIS COURT THIS 7TH
JANUARY 2026**

.....
R. NYAKUNDI
JUDGE