



REPUBLIC OF KENYA



KENYA LAW
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**Matinde v Kosgey (Civil Application E076 of 2025)
[2026] KECA 31 (KLR) (23 January 2026) (Ruling)**

Neutral citation: [2026] KECA 31 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT ELDORET
CIVIL APPLICATION E076 OF 2025
PM GACHOKA, JA
JANUARY 23, 2026**

BETWEEN

BEN MWITA MATINDE APPLICANT

AND

SALINAH KOSGEY RESPONDENT

(An application for leave to file and serve the notice of appeal and the record of appeal out of time from the judgment and decree of the High Court at Eldoret (O. Sewe, J.) delivered on 5th June 2020 in HCCA NO. 133 OF 2014)

RULING

1. The Notice of Motion before me is dated 7th November 2025. It has invoked the provision set out in rules 41, 42 and 43 (1) of the Court of Appeal Rules 2022. The applicant seeks for the following:
 - a. That this Honourable Court be pleased to grant the Applicant an extension of time within which to File and Serve the Notice of Appeal and the Record of Appeal;
 - b. Costs be in the cause;
 - c. Any other Order that this Honourable Court may deem fit and just to grant.
2. The application is supported by the grounds on the body of the Motion and the supporting affidavit of the applicant sworn on that date. The gist of the Motion is that judgment was delivered in the High Court of Kenya at Eldoret HCCA NO. 133 of 2014 on 5th June 2020 during the COVID-19 pandemic. The is aggrieved by those findings. He did not however file his Notice of Appeal in good time because he wanted to consult on the prospects of his appeal. Furthermore, he did not have the requisite fees to lodge the appeal. The applicant urged this Court to allow the application as it will not prejudice the respondent and that it was in the interest of justice.



3. The application favored no response from the respondent. The applicant filed written submissions dated 9th January 2026. He urged this Court to allow the application on the reasons set forth in his application.
4. This is an application under Rule 4 of this Court’s Rules. It provides that the Court may extend time for the doing of an act authorized under the Rules. The constituent elements in succeeding in an application of this nature have been well settled in our jurisdiction. This Court in Fahir Mohammed vs. Joseph Mugambi & 2 Others Civil Application NAI 332/04 (UR) summarized the principles as follows:

The exercise of this Court’s discretion under Rule 4 has followed a well-beaten path since the stricture of “sufficient reason” was removed by amendment in 1985. As it is unfettered, there is no limit to the number of factors the Court would consider so long as they are relevant. The period of delay, the reason for the delay, (possibly) the chances of the appeal succeeding if the application is granted, the degree of prejudice to the respondent if the application is granted, the effect of the delay on public administration, the importance of compliance with time limits, the resources of the parties, whether the matter raises issues of public importance – are all relevant but not exhaustive factors: see *Mutiso vs Mwangi*, Civil Application No. Nai. 255 of 1997 (UR), *Mwangi vs Kenya Airways Ltd* [2003] KLR 486.”

5. The applicant seeks leave to file and serve his Notice of Appeal and record of appeal out of time. The reasons advanced was that he was consulting on the prospects of his appeal and was secondly unable to raise the required fees. This Court is cognizant of the fact that the application has been lodged a whopping five years later. Consultations on the prospects of one’s appeal on its merits or otherwise should not take that much time. Secondly, this Court makes provisions for persons unable to raise the requisite fees under rule 120 of the Court of Appeal Rules.
6. Thirdly, the applicant has failed to inform this Court when he applied for the proceedings and whether he has procured them. Further, this Court takes judicial notice of the fact that as at the time the judgment was delivered, courts had already established the online platform system to mitigate the lack of access that litigants were denied to physically file their pleadings. As such, the claim that the COVID-19 pandemic had hindered his desire to appeal is not acceptable.
7. This Court forms the opinion that the applicant was not serious with his appeal. He was only trying his luck. Unfortunately for him, the requirements of the law have caught up with him. In view of the forgoing, I am satisfied to hold that the applicant does not deserve the benefit of exercise of discretion by this Court. Accordingly, the Notice of Motion dated 7th November 2025 lacks merit and it is hereby dismissed.

DATED AND DELIVERED AT ELDORET THIS 23RD DAY OF JANUARY 2026.

M. GACHOKA C.Arb, FCIArb.

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JUDGE OF APPEAL

I certify that this is a True copy of the original

Signed

DEPUTY REGISTRAR

