



**Norman & 2 others v Naipa Supermarket Limited (Civil Application E037 of 2025) [2026] KECA 22 (KLR) (23 January 2026) (Ruling)**

Neutral citation: [2026] KECA 22 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT ELDORET  
CIVIL APPLICATION E037 OF 2025  
PM GACHOKA, JA  
JANUARY 23, 2026**

**BETWEEN**

**EKODOR NORMAN ..... 1<sup>ST</sup> APPLICANT  
EUNICE ATEYO ..... 2<sup>ND</sup> APPLICANT  
EKIDOR MAUREEN ..... 3<sup>RD</sup> APPLICANT**

**AND**

**NAIPA SUPERMARKET LIMITED ..... RESPONDENT**

*(An application for extension of time to file a Notice of Appeal out of time from the judgment and decree of the Lodwar High Court (R. Nyakundi, J.) delivered on 29th April 2025 in HCCA No. E001 OF 202)*

**RULING**

1. In their Notice of Motion dated 23<sup>rd</sup> May 2025, the applicants have invoked the provisions of Rule 4 of the Court of Appeal Rules seeking leave to file an appeal out of time against the judgment of Nyakundi, J. in Lodwar HCCA No. E001 of 2022 delivered on 29<sup>th</sup> April 2025. They further seek an order that the Notice of Appeal dated 13<sup>th</sup> May 2025, annexed to the application, be deemed as properly on record.
2. The application is based on the grounds set forth in the Notice of Motion and the 1<sup>st</sup> applicant’s supporting affidavit sworn on even date as follows: the applicant is dissatisfied with the judgment of the trial court delivered on 29<sup>th</sup> April 2025 in Lodwar HCCA No. E001 of 2022. The applicants were cognizant that thought they were supposed to file their Notice of Appeal within the statutory timeliness set out in rule 77 of this Court’s Rules, they were unable to because they could not access the certified copies of the judgment and proceedings. They maintained that as the time of filing the application, they were still yet to obtain them.



3. The applicants urged this Court to allow the application on account of the following reasons: the instant application was filed timeously having been filed just after the lapse of 14 days, the time within which they were to file the appeal; the respondent stood to suffer no prejudice if the orders sought are granted; and it was in the interest of justice that the application be allowed as prayed.
4. The respondent opposed the application. It filed a replying affidavit sworn by Anthony Kibetu Munene, the respondent's managing director, on 21<sup>st</sup> January 2026. He deposed that contrary to the applicants' assertions, the impugned judgment was uploaded in the CTS on 6<sup>th</sup> May 2025 within 14 days. It contended that no explanation had been given from the applicants to explain why their Notice of Appeal dated 13<sup>th</sup> May 2025 was filed on 19<sup>th</sup> May 2025, six days outside the statutory timelines. Be that as it may, he added, a Notice of Appeal did not need certified copies of the proceedings and judgment.
5. The respondent further complained that the letter bespeaking for the proceedings and judgment was never copied to it; a demonstration that the applicants were not approaching the Court in good faith. It added that the suit had spanned over four years and the applicants were imploring delaying tactics to deny the respondent the right to enjoy the fruits of his judgment. It prayed that the application be dismissed because the applicants approached the court with unclean hands, no sufficient reasons had been advanced and the delay was inordinate and unexplainable.
6. The application was canvassed by way of written submissions. The applicants filed written submissions dated 12<sup>th</sup> January 2026. Citing several authorities, they submitted that on account of the period it took to file the application, coupled with the reasons for the delay furnished, this Court ought to allow the application. The respondent filed written submissions dated 21<sup>st</sup> January 2026. It submitted that based on the reasons set forth in its replying affidavit, the applicants were undeserving of the exercise of discretion by this Court. It prayed that the application be dismissed with costs.
7. I have considered the application, the response, the written submissions 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. In this application, the applicants have explained that since they could not procure the certified proceedings and judgment in good time, which they are still yet to obtain, they were unable to comply with Rule 77 of the Court of Appeal Rules. This is a lackadaisical argument. As rightly pointed out by the respondent, the applicants did not need the certified copies of the proceedings and judgment to lodge their Notice of Appeal.
9. However, this Court notes that the applicants ought to have filed their Notice of Appeal by 13<sup>th</sup> May 2025. Their application is dated 23<sup>rd</sup> May 2025, ten day after the lapse of time. Thus, in the interest of justice, this Court finds that the applicants ought to benefit from the exercise of discretion in their favor. The application was filed with speed and the delay in filing the Notice of Appeal has been explained. Accordingly, the Notice of Motion dated 23<sup>rd</sup> May 2025 is allowed. The applicants shall file and serve their Notice of Appeal within seven days from the date of this order. The costs of the application shall abide the outcome of the appeal. It is so ordered.

**DATED AND DELIVERED AT ELDORET THIS 23<sup>RD</sup> DAY OF JANUARY 2026.**

**M. GACHOKA C.Arb, FCI Arb.**



.....

**JUDGE OF APPEAL**

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

Signed.

**DEPUTY REGISTRAR**

