



REPUBLIC OF KENYA



**KENYA LAW**  
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**Oyieke v Kenya National Trading Corporation Limited (Civil Application  
E172 of 2025) [2026] KECA 90 (KLR) (28 January 2026) (Ruling)**

Neutral citation: [2026] KECA 90 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT KISUMU  
CIVIL APPLICATION E172 OF 2025  
LK KIMARU, JA  
JANUARY 28, 2026**

**BETWEEN**

**JACK OMONDI OYIEKE ..... APPLICANT**

**AND**

**KENYA NATIONAL TRADING CORPORATION LIMITED ..... RESPONDENT**

*(Being an application for extension of time to appeal out of time from the  
Judgment of the Employment and Labour Relations Court of Kenya at Kisumu  
(Nzioka wa Makau, J) dated 5th November, 2025 in ELRC No. E021 of 2024)*

**RULING**

1. Jack Omondi Oyieke, the applicant herein, moved the Court by notice of motion made substantially under Rule 4 of the Court of Appeal Rules seeking to be granted leave to file notice of appeal and the memorandum and the record of appeal out of time. The applicant states that he did not lodge the appeal in time due to financial challenges that prevented him from instructing counsel in time to file the appeal on his behalf. The applicant states that he was dissatisfied with the decision of Employment and Labour Relations Court (ELRC) and wishes to appeal against the said decision to this Court. The applicant is of the view that his appeal has reasonable chances of success. He noted that the respondent will not suffer prejudice. It would also serve the interest of justice if the application is allowed. The application is supported by the annexed affidavit of the applicant.
2. The application is opposed. Mitchell Nashipal, the acting legal officer of the respondent swore a replying affidavit in opposition to the application. In the said affidavit, he deponed that the applicant had not advanced cogent or any reasons for the delay in filing the appeal in time to enable this Court exercise discretion in his favour. He swore that the reasons given by the applicant for delay in lodging the appeal in time were unconvincing and untenable and cannot form a basis upon which this Court can grant the application. The respondent accused the applicant of indolence and lack of seriousness and therefore undeserving of the exercise of judicial discretion by the Court. The respondent played



down the chances of the applicant's appeal succeeding. The respondent urged the Court to dismiss the application with costs.

3. This Court has carefully considered the application, the replying affidavit, the written submissions filed by the parties and the authorities cited in support and in opposition to the application. Both parties appreciate that in determining this application under Rule 4 of the Court of Appeal Rules, this Court is exercising judicial discretion. The exercise of this discretion is not on whim or caprice but is bound by long established principles which include whether the applicant has given satisfactory explanation for the delay; if the delay is inordinate that it disentitles the applicant to the exercise of discretion by the Court; whether, if granted, the appeal is arguable and has chances of success and finally, whether the respondent will be prejudiced by the grant of the orders sought by the applicant (See *Nyongesa v. Lukuyu* [2025] KECA 1044 (KLR)).
4. In the present application, the Judgment that is subject of this application was delivered on 5<sup>th</sup> November, 2025. The present application was filed on 10<sup>th</sup> December, 2025. Excluding the fourteen (14) days period that is provided under Rule 77(2) of the Court of Appeal Rules, the period of delay is twenty-one (21) days. The applicant explained that he was prevented from lodging the appeal in time due to financial constraints. He did not get funds to pay the legal fees required by his Counsel to file the appeal to this Court in time. Although the respondent doubted that this was a genuine reason for the delay, upon evaluation of the facts of this application, this Court is convinced that the applicant gave a reasonable explanation for the delay in lodging the appeal in time. The period of delay is not inordinate. The respondent will not be prejudiced by the applicant exercising his right of appeal to this Court. If the respondent will suffer any prejudice, it shall be compensated by an award of costs.
5. In the premises therefore, the application has merit and is hereby allowed. The applicant shall file and serve the notice of appeal within seven (7) days of today's date. He shall file and serve the record of appeal within forty-five (45) days of service of the notice of appeal.
6. The respondent shall have the costs of the application.

**DATED AND DELIVERED AT KISUMU THIS 28H DAY OF JANUARY,2026.**

**L. KIMARU**

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**JUDGE OF APPEAL**

I certify that this is a true copy of original.

Signed

**DEPUTY REGISTRAR.**

