



**Technical University of Kenya v Yawazee (Personal Representative
in the Estate of John Omole Owuor - Deceased) (Civil Application
E451 of 2025) [2026] KECA 119 (KLR) (30 January 2026) (Ruling)**

Neutral citation: [2026] KECA 119 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPLICATION E451 OF 2025
F TUIYOTT, JA
JANUARY 30, 2026**

BETWEEN

TECHNICAL UNIVERSITY OF KENYA APPLICANT

AND

**IRENE AKOTH YAWAZEE (PERSONAL REPRESENTATIVE IN THE ESTATE
OF JOHN OMOLE OWUOR - DECEASED) RESPONDENT**

*(Being an application for extension of time to file an Appeal out of time from
the judgment of Employment and Labour Relations Court at Nairobi (Hellen
Wasilwa, J.) dated 9th July, 2020 in ELRC PETITION NO. 45 OF 2017)*

RULING

1. By an application dated 15th July, 2025 brought pursuant to rules 4,33,41,47,49 and 87(1) of the rules of this Court, the applicant seeks an order for extension of time within which to file and serve a record of appeal against the decision of Hellen Wasilwa, J. delivered on 9th July, 2020 in ELRC Petition No. 45 of 2017.
2. In an affidavit of Ruth Kirwa, the Chief Legal Officer of the applicant, sworn on even date, she deposes that although a notice of appeal was lodged in 11th August 2020 and a stay of execution granted on 3rd February 2023 by this Court, the formal filing of the appeal was delayed on account the death of the petitioner on 22nd July 2020. She contends that the applicant's advocates were not informed of this death until 26th February 2021, upon which they halted the filing process to await the mandatory appointment of a legal representative to be substituted in the proceedings. The ensuing delay was orchestrated by the respondent's side, as the process for obtaining a limited grant of letters of administration ad litem (Succession Cause No. E1524 of 2020) took over two years to conclude, with the grant only being issued on 24th July 2023. Furthermore, the grant was not served upon the



applicant's advocates until 4th September 2024, more than a year after its issuance. She argues that under rules 4, 33, and 84(1) of the Court of Appeal Rules 2022, the court has the discretion to extend the 60-day filing period, asserting that the lapse of time was not a deliberate attempt to deny the respondent the fruits of the judgment but a consequence of the long wait for appointment of a legal defender of the estate. In addition, that the intended appeal is arguable and not frivolous, a position bolstered by the fact that the court had previously granted a stay of execution on 3rd February 2023 after finding the applicant's grounds are arguable. She contends, further, that as a public body with regulated finances, the university would suffer an irreparable loss and a severe financial instability if forced to satisfy the judgment without an appeal, potentially rendering the entire legal process an exercise in futility. Finally, she asserts that it is in the interest of justice to grant the extension, particularly as the respondent has recently moved to tax a bill of costs despite the pending stay orders issued by this Court.

3. The respondent filed a replying affidavit of Isaac Simiyu Kuloba, an advocate in conduct of this matter on behalf of the respondent, sworn on 10th November, 2025. In opposing the application, he contends that although the applicant admits to receiving the grant on 4th September 2024, it has only provided an explanation for the period preceding that date, leaving the subsequent delay of nearly a year (until 15th July 2025, the date of this application) completely unaccounted for. The respondent contends that the applicant only arose from its slumber after being served with a bill of costs on 4th June 2025, a reactive attempt to block the assessment of costs. He asserts that the application fails to meet the established judicial threshold for a court to exercise its discretion, as it does not sufficiently address four critical parameters: the length of delay, the reasons for delay, the intended appeal's chances of success, and the prejudice caused to the respondent. It has now been more than five years since the original judgment was delivered, and granting a stay at this stage would be highly prejudicial as the respondent has already begun executing the decree and assessing costs. Finally, the respondent challenges the technical validity of the applicant's certificate of delay, arguing it is invalid because the applicant failed to apply for proceedings within the mandatory 30-day window or serve the letter requesting for such proceedings as required by Rule 82 of the Court of Appeal Rules 2010. Consequently, the application lacks merit and should be dismissed with costs.
4. The parties filed their submissions which substantially regurgitate the positions taken in the two affidavits.
5. Rule 84 makes provision for institution of appeals and reads: -
 - “(1) Subject to rule 118, an appeal shall be instituted by lodging in the appropriate registry, within sixty days of the date when the notice of appeal was lodged-
 - a. a memorandum of appeal, in quadruplicate;
 - b. the record of appeal, in quadruplicate;
 - c. the prescribed fee; and
 - d. security for the costs of the appeal.

Provided that where an application for a copy of the proceedings in the superior court has been made in accordance with sub-rule (2) within thirty days of the date of the decision against which it is desired to appeal, there shall, in computing the time within which the appeal is to be instituted, be excluded such times may be certified by the registrar of the superior court as having been



required for the preparation and delivery to the appellant of such copy.

2. An appellant shall not be entitled to rely on the proviso to sub-rule (1) unless his application for such copy was in writing and a copy of it was served upon the respondent.
3. The period limited by sub-rule (1) for the institution of appeals shall apply to appeals from superior courts in the exercise of their bankruptcy jurisdiction.”

6. I take it that it is common ground that it may not have been feasible for the applicant to file an appeal until a personal representative of the estate of the deceased respondent had been appointed. And for purposes of working out the delay, the respondent concedes that 4th September 2024 is critical as it is on that date that a copy of the grant was availed to the applicant’s counsel. The application before Court was filed on 15th July 2025, this would be ten (10) months after the applicant became aware of the identity of the legal representative of the estate of the deceased respondent. The applicant offers no explanation whatsoever as to why it did not move this Court earlier for the orders now sought. In the absence of an explanation, the ten (10) month delay is inordinate and not excusable.

7. For the reason given, the discretion of this Court, having regard to the guidelines restated in *Fakir Mohamed v Joseph Mugambi & 2 others* [2005] KECA 340 (KLR), does not lean in favour of granting extension of time

8. The application of 15th July, 2025 is therefore dismissed with costs to the respondent.

DATED AND DELIVERED AT NAIROBI THIS 30TH DAY OF JANUARY 2026.

F. TUIYOTT

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JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR.

