

**IN THE COURT OF  
APPEAL AT NAIROBI**

**(CORAM: TUIYOTT, JA (IN**

**CHAMBERS) CIVIL APPLICATION NO.**

**E468 OF 2025 BETWEEN**

**UNIQUELOO LIMITED..... 1<sup>ST</sup> APPLICANT**  
**ERIC KIMALI MUTUKU..... 2<sup>ND</sup> APPLICANT**

**AND**

**RACHEL WANJIKU NGETHE.....RESPONDENT**

*(Being an application for extension of time to file a Notice of Appeal out of time from the judgment of the High Court of Kenya at Kiambu (D.O. **Chepkwony, J.**) dated 10<sup>th</sup> June, 2025*

*in*

**Civil Case No. 16 of 2020)**

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**RULING**

[1] The applicants, being aggrieved by the decision of **D.O. **Chepkwony, J.**** delivered on 10<sup>th</sup> June, 2025 in Kiambu Civil Suit No. 16 of 2020, desire to appeal against the said decision. They however failed to file the notice of appeal within the requisite timelines and now bring this application dated 22<sup>nd</sup> July, 2025 seeking leave for extension of time or that the notice

of appeal already filed on 16<sup>th</sup> July, 2025 be deemed to be properly on record.

[2] In support of the application is the affidavit of **Robert Njogu Githinji**, an advocate practising in the firm of Karanja Otunga & Associates Advocates, sworn on even date. Counsel deposes that while the judgment was delivered on 16<sup>th</sup> June, 2025, the same was not made available to the parties until 14<sup>th</sup> July, 2025 when it was posted on the judiciary dashboard. Thereafter, the applicant instructed the firm to file an appeal to which they did on 16<sup>th</sup> July, 2025, similarly bespeaking certified copies of the typed proceedings, decree and judgment. Although they had paid for both they are yet to receive the certified copies. Counsel urges this court to allow the application, contending that the respondent will not suffer any prejudice for the reason that several of the awards in the judgment were entered in error of law and fact.

[3] No replying affidavit was filed, the respondent opting to answer the application through filed submissions. The Court shall consider this along with application and submissions on

behalf of the applicants. But first the answer.

[4] It is argued that the applicants violated rule 77 (1)(2) of the Court of Appeal Rules, 2022 by failing to lodge and serve the notice of appeal within 14 days and 21 days respectively and the reason given for the delay is not reasonable as counsel for the applicants was in court on 25<sup>th</sup> November, 2024 when the court set the judgment date. In addition, there is no requirement in law for an intended appellant to await the typed judgment before lodging a notice of appeal. The respondent argues, further, that the applicants have failed to show prejudice they would suffer if the application is not allowed whereas the respondent has been severely incapacitated due to the negligence of the applicants and has endured hours upon hours of painful surgeries, more than eight, losing the ability to work and leaving her in deep debt.

[5] The discretion granted to this court under rule 4 of the rules of this Court is exercised within the well settled principles restated time without number. For example, in **Fakir Mohamed v Joseph Mugambi & 2 others [2005] KECA 340 (KLR)**: -

***“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 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...”***

[6] Rule 77(2) requires that a notice of appeal is lodged within fourteen days of the decision intended to be appealed against. The judgment intended to be appealed from by the applicants was delivered on 10<sup>th</sup> June, 2025. The notice of appeal was filed outside the prescribed timelines (on 16<sup>th</sup> July, 2025) and the delay has been attributed to the fact that the judgment was not posted on the court’s digital platform until 14<sup>th</sup> July, 2025. Counsel thereafter promptly filed the notice of appeal on 16<sup>th</sup> July, 2025, a delay of about 22 days from the last day of the time prescribed for such notice to be filed.

[7] From the Coram of the day of delivery of judgment, there was no appearance for the applicants and this court believes that they were indeed absent. Further, I have no reason to doubt the applicant’s counsel when he says that a copy of the judgment was not posted on the dashboard of the

judiciary until 14<sup>th</sup> July

2025 as there is no evidence in rebuttal. The delay is short and explained. The reason for the delay is plausible and is excusable. On the other hand, the respondent's apprehension that she will be locked out of the fruits of her judgment if the extension is granted may be misplaced as grant of the order does not amount to staying the implementation or execution of the judgment.

[8] Clearly the scale tips in favour of allowing the application of 22<sup>nd</sup> July, 2025 which I hereby do. The notice of appeal lodged on 16<sup>th</sup> July, 2025 is hereby deemed as duly filed and served. The appeal shall be filed and served within forty-five (45) days of this Ruling. Costs shall abide the outcome of the intended appeal.

**Dated and delivered at Nairobi this 30<sup>th</sup> day of January 2026.**

**F. TUIYOTT**

.....  
**JUDGE OF APPEAL**

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

***Signed***

**DEPUTY**

**REGISTRAR.**