

**IN THE COURT OF APPEAL
AT NAIROBI**

**(CORAM: MUMBI NGUGI
JA)**

CIVIL APPEAL (APPLICATION) NO. E751 OF 2025

BETWEEN

**THE KENYA HOSPITAL ASSOCIATION t/a
THE NAIROBI HOSPITAL.....1ST APPLICANT
BOARD OF MANAGEMENT,
KENYA HOSPITAL ASSOCIATION t/a
THE NAIROBI HOSPITAL.....2ND
APPLICANT**

AND

**THE CHIEF EXECUTIVE OFFICER,
KENYA HOSPITAL ASSOCIATION
t/a
THE NAIROBI HOSPITAL..... 1ST
RESPONDENT THE COMPANY SECRETARY,
KENYA HOSPITAL ASSOCIATION t/a
THE NAIROBI HOSPITAL 2ND
RESPONDENT
DR. BARCLAY ONYAMBU 3RD
RESPONDENT**

(Being an application for extension of time to serve a Notice of Appeal out of time from the Ruling and Orders of the High Court at Nairobi, (Hon. Justice Sifuna Nixon) delivered on 9Th July 2025

in

Milimani Civil Case No. E173 of 2023)

RULING

1. In the application dated 24th October 2025, the applicants seek extension of time within which to serve the notice of appeal dated 22nd July 2025. In the alternative, they ask for an order that the Court be pleased to validate the service

done upon the respondent on 30th July 2025 and deem it proper service.

2. The application is brought under rule 4 and 55(1) of the Court of Appeal Rules, 2022 and is supported by an affidavit sworn by their advocate on record, Dr. Duncan Okubasu, on 24th October 2025
3. It is averred for the applicants that the notice of appeal was filed within time on 22nd July 2025 but was served upon the respondents on 30th July 2025, nine hours outside the period prescribed under the Rules; that a record of appeal was subsequently filed, and the parties, including the respondents, have already filed submissions on the appeal.
4. The applicants' case as set out in their application, the supporting affidavit and their written submissions dated 4th December 2025 is that they were dissatisfied with the ruling of the trial court (Sifuna J.) dated 9th July 2025 and they filed a notice of appeal dated 22nd July 2025; that owing to an oversight, the notice of appeal, though filed within time, was served on the respondents on 30th July 2025 instead of within seven days as required under the Rules; that on 30th July 2025, the said error was noticed and the process server attended the respondents' advocates' offices after 9.00 a.m., which resulted in a nine-

hour delay in service; that the delay

was minimal, arose purely from an oversight, and no prejudice has been suffered by the respondents; that the appeal is arguable with high chances of success as demonstrated in the annexed memorandum of appeal; and that deviations in procedural timelines that cause no prejudice should not defeat substantive justice.

5. The 1st respondent filed an affidavit which he swore on 15th December 2025 and submissions of the same date. The 2nd respondent also filed submissions in support dated 16th December 2025. There was no affidavit or submissions on record in opposition to the application.
6. I have considered the application, the affidavits in support and the submissions on record. There being no opposition to the application, the role of the Court is to consider whether it should grant the applicants the order that they seek. The factors for consideration in the exercise of the Court's discretion on an application under rule 4 of this Court's Rules are well settled- see **Salat v Independent Electoral and Boundaries Commission & 7 others** [2014] KESC 12 (KLR). These are the length of the delay, the reasons for the delay, the chances of the appeal succeeding, and the degree

of prejudice to be suffered by the respondents if the orders sought are not granted.

7. In this case, the applicants filed a notice of appeal dated 22nd July 2025 on the same date. Under rule 79 of this Court's Rules, the notice should have been served on the respondents within 7 days of the 22nd of July 2025, by the 29th of July 2025. It was served, according to the applicants, 9 hours late, on 30th July 2025. The affidavit sworn by the 1st respondent indicates that it was served on his respondents at 9.10 a.m. on 30th July 2025.
8. Having considered the facts before me, I find that there is hardly any delay to speak of in the present matter, nor has any prejudice to the respondents been demonstrated, judging from the fact that there is no opposition to the application on record. Further, the respondents have already filed submissions on the substantive appeal, implying an acceptance that the appeal is properly on record. The 9-hour delay in serving the notice of appeal can be attributed to a mistake, fully understandable and excusable in the circumstances. As was held in **Samuel Mbugua Githere v Kimungu** [1984] KECA 51:

“...where there has been a bona fide mistake, and no damage has been done to the other side which cannot be sufficiently compensated by costs, the Court should lean towards exercising its discretion in such a way that no party is shut out from being heard on its appeal.”

See also **Belinda Murai & 9 others v Amos Wainaina** [1979] KECA 25 (KLR) and **Philip Keipto Chemwolo & another v Augustine Kubende** [1986] KECA 87 (KLR)

9. Having so found, I allow the application dated 24th October 2025. The notice of appeal served on the respondents on 30th July 2025 is hereby deemed as valid and duly served.
10. There shall be no order as to costs.

Dated and delivered at Nairobi this 13th day of February, 2026.

MUMBI NGUGI

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JUDGE OF APPEAL

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

Signed
DEPUTY REGISTRAR.