



**Mwaura v Safaricom Limited (Civil Application E803 of 2025)
[2026] KECA 235 (KLR) (13 February 2026) (Ruling)**

Neutral citation: [2026] KECA 235 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPLICATION E803 OF 2025
M NGUGI, JA
FEBRUARY 13, 2026**

BETWEEN

FRANCIS MWAURA APPLICANT

AND

SAFARICOM LIMITED RESPONDENT

(Being an application for extension of time to serve the Notice of Appeal out of time, brought under Rule 4 and Rule 77 of the Court of Appeal Rules, 2022, arising from the judgment of the Employment and Labour Relations Court at Nairobi (B. O. Manani, J.) delivered on 15th September 2025 in ELRC Cause No. E496 of 2021)

RULING

1. In his application dated 9th October 2025, the applicant, Francis Mwaura, seeks extension of time to serve his notice of appeal dated 17th September 2025 on the respondent, Safaricom Limited. The application is brought under rule 4 and 77 of this Court's Rules.
2. It is based on the grounds that there was an 'advertent' (sic) omission and oversight on the part of his advocate to serve [the notice of appeal in accordance with rule 77 of the Court of Appeal Rules; that the Notice of Appeal was, however, filed together with the record of appeal; that the present application has been brought without undue delay; the appeal has high chances of success; and that he will be severely prejudiced if this application is not allowed.
3. In his affidavit in support of the application sworn on 9th October 2025, the applicant avers that the Notice of Appeal was filed on time and is included at page 781 of the Record of Appeal; that due to an oversight and "an advertent omission" on the part of his advocate, the Notice of Appeal was not served on the respondent as required under rule 77 of this Court's Rules; that the omission was not deliberate; and that upon realizing the mistake, he moved with speed to file the present application without undue delay.



4. The applicant further avers that the respondent's advocates, by an email dated 7th October 2025, requested to be served with the record of appeal, which contained the notice of appeal, an indication, he asserts, that the respondent became aware of the appeal despite the lapse in service. He avers that his appeal has high chances of success and asserts that he will be greatly prejudiced if the extension sought is not granted, as the appeal would be defeated on a technicality.
5. In his submissions dated 23rd October 2025, the applicant submits that under rule 4 of this Court's Rules, extension of time is a discretionary power of the Court and not an automatic right, citing in support the Supreme Court decision in *Nicholas Kiptoo Arap Korir Salat v IEBC* [2014] eKLR and *Andrew Kiplangat Cheremino v Paul Kipkorir Kibet* [2018] eKLR. He reiterates his averment that the notice of appeal was filed on time but was not, due to inadvertence on the part of his advocates, served as required.
6. It is argued that the application was brought promptly and without undue delay, and that the respondent will not be prejudiced by the extension. The applicant reiterates his contention that the respondent's own email request on 7th October 2025 for the record of appeal is evidence that the respondent was aware of the appeal and merely missed formal service. The applicant submits that he has met the threshold for granting extension of time under rule 4; that he has established the 'gravity of the application dated 19th December 2023'; and that it should be allowed as prayed.
7. The respondent opposes the application by an affidavit sworn on 15th December 2025 by Cerere Kihoro, its Legal Counsel, Technology and Corporate Centre, and submissions dated 11th December 2025. The respondent avers that from a receipt obtained from the court's e-filing system, a notice of appeal dated 17th September 2025 was filed by the applicant on 18th September 2025; that under rule 79 of this Court's Rules, it should have been served on the respondent by 24th September 2025; that the respondent was caught by surprise on 8th October 2025 when it was served with a record of appeal as it had not been served with a notice of appeal, and it protested against the filing of the record of appeal.
8. The respondent avers that the applicant has been indolent; that he has advanced no valid reasons for failure to serve the notice of appeal; and that he filed this application after being reminded by the respondent by the email dated 8th October 2025. The respondent further asserts that the applicant has not showed that he has an arguable appeal, and should the application be allowed, it will suffer prejudice as the parties have been litigating for more than five years.
9. In its submissions, the respondent reiterates its averments that the present application lacks merit; that although the notice of appeal was lodged on 18th September 2025, it was not served within the seven-day period prescribed under rule 79 of the Court of Appeal Rules, which lapsed on 24th September 2025; that rule 4 grants the Court discretion to extend time, but the appellant has failed to lay any basis for the exercise of discretion in his favour, having offered no valid explanation for the failure to effect service of the notice of appeal within the prescribed timeline.
10. The respondent cites the decisions in *Charo v Mwashetani & 3 Others* (2014) KLR-SCK; *Nicholas Kiptoo Arap Korir Salat v IEBC & 7 Others* [2014] KESC 12 (KLR); and *Mwambora & 9 others v Spire Properties (K) Limited & 50 others* [2023] KESC 12 (KLR) and *Andrew Kiplangat Chemaringo v Paul Kipkorir Kibet* [2018] eKLR in support of its submission that a party seeking extension of time must demonstrate sufficient reason for delay in complying with the Rules in order for the Court's discretion to be exercised in its favour.
11. It is the respondent's submission further that without proper service of the notice of appeal, there is no competent appeal before the Court, and the record of appeal ought to be expunged and the appeal struck out. It reiterates that it will suffer prejudice if the application is allowed as the litigation has been



ongoing since 2021; that it should be permitted to enjoy the fruits of the judgment; and it prays that the application and the appeal be dismissed with costs.

12. The factors to be considered on an application under rule 4 of this Court's Rules are settled- see *Salat v Independent Electoral and Boundaries Commission & 7 others* [2014] KESC 12 (KLR) and *Leo Sila Mutiso v Rose Hellen Wangari Mwangi* [1999] 2 EA 231. The Court is required to consider the length of the delay; the reason for the delay; (possibly) the chances of the appeal succeeding; and the degree of prejudice to the respondent should the orders sought be granted.
13. In *Andrew Kiplagat Chemaringo v Paul Kipkorir Kibet* [2018] KECA 701 (KLR), the Court stated:

“ [12]. The law does not set out any minimum or maximum period of delay. All it states is that any delay should be satisfactorily explained. A plausible and satisfactory explanation for delay is the key that unlocks the court's flow of discretionary favour. There has to be valid and clear reasons, upon which discretion can be favourably exercisable.”
14. In this case, the decision sought to be appealed from was rendered on 15th September 2025, and from the documents before the Court, I note that a notice of appeal was filed on 18th September 2025. Under rule 79 of this Court's Rules, the applicant should have served the notice of appeal before or within 7 days of that date, by about 25th September 2025. It would appear that the applicant's advocates may have been under the misapprehension that they had complied with the Rules with regard to the Notice of Appeal, and they filed and served a record of appeal on the respondent on 7th October 2025, only realising that they had not served the Notice of Appeal upon receipt of the respondent's email dated 8th October 2025 in which the respondent noted that it had not received the notice of appeal; indicating that the applicant's advocates had served a record of appeal with respect to a criminal appeal in Siaya; and requesting for service of the record of appeal, which prompted the filing of this application.
15. Having considered the facts presented before me, I find that even though there was a delay of about 13 days in serving the notice of appeal, such delay is not inordinate, noting, first, that the applicant's appeal had been filed, and further, that the present application was filed immediately upon the applicant realising that the notice of appeal had not been served. The applicant's advocates have not demonstrated the diligence and competence that would be expected, judging from the errors demonstrated by their failure to serve the notice of appeal; serving a wrong record of appeal on the respondent; and the obvious errors in drafting manifest on this application. These, however, do not detract from my finding that the delay is not inordinate.
16. I therefore grant the orders sought in the application dated 9th October 2025 as prayed.
17. The respondent shall have the costs of the application.

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.

