



**Omole (Suing as the Legal Representative of the Estate of the Late  
Grace Adhiambo Dongo - Deceased) v Rorio (Civil Application  
E163 of 2025) [2026] KECA 209 (KLR) (5 February 2026) (Ruling)**

Neutral citation: [2026] KECA 209 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT KISUMU  
CIVIL APPLICATION E163 OF 2025  
LK KIMARU, JA  
FEBRUARY 5, 2026**

**BETWEEN**

**EDWIN ALFRED OMOLE ..... APPELLANT  
SUING AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF THE LATE  
GRACE ADHIAMBO DONGO - DECEASED**

**AND**

**WALTER RORIO ..... RESPONDENT**

*(Being an application for extension of time to lodge the notice of appeal  
out of time from the Judgment of the High Court of Kenya at Kakamega  
(S. Mbungi, J) dated 30th October, 2025 in HCCA No. E080 of 2024)*

**RULING**

1. The applicant was aggrieved by the Judgment of the High Court which was rendered on 30<sup>th</sup> October, 2025. The applicant desires to appeal against the said Judgment to this Court. He has moved this Court by notice of motion substantially made under Rule 4 of the *Court of Appeal Rules* seeking to be granted extension of time to appeal out of time. The applicant states that the said Judgment was scheduled to be delivered on 16<sup>th</sup> October, 2025. It was not delivered on that day due to the absence of the Court. He was informed that the Judgment would be delivered at a later date on notice.
2. When the applicant inquired from the Court on 22<sup>nd</sup> November, 2025 when the Judgment will be delivered, he was shocked to learn that the Judgment had been delivered on 30<sup>th</sup> October, 2025 in his absence. By that time, the period upon which he was required to file the notice of appeal had long expired. He filed the present application on 2<sup>nd</sup> December, 2025 craving for extension of time to file appeal out of time. The applicant explains the reason for delay to be on account of reasons beyond



its control. The application is supported by the annexed affidavit of the Edwin Alfred Omole, the applicant.

3. The respondent was served. He did not file a replying affidavit in opposition to the application. The application is therefore unopposed.
4. This Court's jurisdiction when considering applications under Rule 4 of the *Court of Appeal Rules* is the exercise of judicial discretion. The exercise of this discretion is, however, circumscribed by the following laid down principles; the reason for delay, the length of delay, chances of the appeal succeeding and whether the respondent will be prejudiced. (See *Paul Wanjobi Mathenge v. Duncan Gichore Mathenge* [2013] KECA 199 (KLR)).
5. In the present application, the applicant has given the reason for delay in lodging the appeal in time. The Judgment that is subject of this application was delivered in the absence of the parties. The parties were not notified of the date the Judgment was to be delivered. The applicant only became aware that the Judgment had been delivered when he made inquiry on the date the Judgment was scheduled to be delivered. By that time, the period upon which the applicant was required to file the appeal had expired. The applicant immediately filed the present application for appropriate relief. This Court is convinced by the reasons advanced by the applicant for delay in lodging the notice of appeal in time. It was reasons beyond his control. The applicant acted expeditiously in filing the present application. The application is unopposed.
6. In the circumstances therefore, the application has merit. It is hereby allowed. The applicant is granted extension of time to file the notice of appeal out of time. The said notice of appeal shall be filed and served within forty-five(45) days of today's date. There shall be no orders as to costs.

**DATED AND DELIVERED AT KISUMU THIS 5<sup>TH</sup> DAY OF FEBRUARY,2026.**

**L. KIMARU**

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**JUDGE OF APPEAL**

I certify that this is a true copy of original.

Signed

**DEPUTY REGISTRAR**

