

**IN THE COURT OF  
APPEAL AT ELDORET  
(CORAM: GACHOKA J.A - IN CHAMBERS)  
CIVIL APPLICATION NO. E007 OF 2026  
BETWEEN**

**KEN-MART SUPERMARKET LIMITED.....APPLICANT  
AND  
KENYA UNION OF COMMERCIAL  
FOOD  
AND ALLIED WORKERS.....RESPONDENT**

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**RULING**

1. In its Notice of Motion dated 22<sup>nd</sup> January 2026, the applicant seeks for the following omnibus prayers:

- 1. ...Spent;**
- 2. THAT the applicant be granted leave to file and serve the notice of appeal and memorandum of appeal out of time against the entire judgment of Hon. Lady Justice Maureen Onyango delivered on 21<sup>st</sup>**

***November 2025 in ELRCC/E006/2025;***

- 3. THAT there be a stay of execution of the judgment and decree dated 21<sup>st</sup> November 2025 pending the hearing and determination of the intended appeal;**
- 4. THAT costs of this application be in the intended appeal.**

2. It is important to note that this Court, as constituted herein, is only vested with the jurisdiction to determine prayer 2. I will therefore constrain my decision and arguments raised by the applicant to that prayer alone. The application is premised on the grounds on the face of the Motion. It is further stated to be grounded on the supporting affidavit of Uday Khetiya, the applicant director.
3. According to the applicant, this Court should grant the application for the reason that the delay in filing the appeal was administrative as it did not receive the judgment in good time. Further, the applicant changed its firm of advocates. It also justified that the appeal had prospects of success and it was therefore necessary that leave be granted to appeal out of time. Finally, the delay in filing the application was not inordinate. The applicant additionally annexed its draft notice of appeal and memorandum of appeal.

4. The application was opposed. The respondent relied on the replying affidavit of Andrew K. M'mukiri, the respondent's general secretary, sworn on 27<sup>th</sup> February 2026. The respondent deposed that the delay of 44 days in filing the notice of appeal and record of appeal was inordinate and was not satisfactorily explained. It accused the applicant of indolence in bringing the appeal stating that the allegations set out in the application were unfounded.
5. The respondent urged this Court to dismiss the application with costs as the memorandum of appeal did not disclose any reasonable grounds, the application was intended to delay the respondent's enjoyment of the fruits of its judgment and the grant of the orders sought would be prejudicial to it.
6. The application was canvassed by way of written submissions.

The applicant filed written submissions dated February 2026 (*sic*). It prayed that its application be allowed. The respondent on its part filed written submissions and a list of authorities both dated 26<sup>th</sup> February 2026 praying that the application be dismissed with costs.

7. Under Rule 4 of this Court's Rules, the Court may extend time for the doing of an act authorized under the Rules. The constituent elements for succeeding in an application of this nature have been well settled in our jurisdiction. This Court in **Fahir Mohammed vs. Joseph Mugambi & 2 Others** Civil Application NAI 332/04 (UR) summarized the principles as follows:

***"The exercise of this Court's discretion under Rule 4 has followed a well-beaten path since the stricture of "sufficient reason" was removed by amendment in 1985. As it is unfettered, there is no limit to the number of factors the Court would consider so long as they are relevant. 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 the 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: see Mutiso vs Mwangi, Civil Application No. Nai. 255 of 1997 (ur), Mwangi vs Kenya Airways Ltd [2003] KLR 486".***

8. I have considered the Notice of Motion, the affidavit and the

annexures thereto as well as the law. I find that the  
applicant

deserves the exercise of discretion for the reason that the delay, which is not inordinate, has been explained. Accordingly, I direct the applicant to file its notice of appeal and memorandum of appeal within the next 14 days from the date of this order. The costs of the application shall abide the outcome of the appeal.

**Dated and Delivered at Eldoret this 6<sup>th</sup> day of March, 2026.**

**M. GACHOKA C.Arb, FCI Arb.**

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**JUDGE OF APPEAL**

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

**Signed**

**DEPUTY REGISTRAR**