

**IN THE COURT OF  
APPEAL AT  
NAIROBI**

**CORAM: JAMILA MOHAMMED, J.A. (IN  
CHAMBERS)) CIVIL APPLICATION NO. E361 OF  
2025**

**BETWEEN**

**HON. SIMON NGA'NG'A MBUGUA.....APPLICANT**

**AND**

**JACINTA WANGARI GITAU.....RESPONDENT**

(Application for extension of time to file the Notice of Appeal out of time from the judgment of the High Court of Kenya at Nairobi (J. K. Njagi, J.) dated 11<sup>th</sup> December,

2024 in

**HCCC No. 546 of 2010)**

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**RULING**

**Background**

1) The application dated 17th June 2025, brought pursuant to Rule 4 of the Court of Appeal Rules, 2022, seeks an order extending time within which to file the Notice of Appeal against the judgment of the High Court (**J.K. Njagi, J.**) together with an order that costs of the application be provided for. The application is supported by the affidavit sworn on the same date by **Hon. Simon Ng'ang'a Mbugua** (the applicant).

2) The background to the application is that on 11<sup>th</sup> December 2024, the High Court delivered judgment awarding **Jacinta Wangari Gitau** (the

respondent) general damages of Kshs.2,000,000/= and aggravated damages of Kshs.500,000/=.

- 3) At the time the impugned judgment was delivered, the applicant was represented by the firm of **Kinoti & Kibe Company Advocates**. The applicant avers that by then the advocate - client relationship had irretrievably broken down, with the consequence that he was neither informed of the delivery of judgment nor advised on the implications of that judgment or the procedure for lodging an appeal.
- 4) Consequently, no Notice of Appeal was filed within the prescribed period, which lapsed on 20<sup>th</sup> January 2025. The applicant subsequently instructed the firm of **Osundwa & Company Advocates**, who filed a Notice of Appointment on 31<sup>st</sup> January 2025 together with a consent allowing them to come on record.
- 5) Upon coming on record, the said advocates wrote a letter bespeaking proceedings and obtained a copy of the judgment on 3<sup>rd</sup> February 2025. Upon perusing the judgment, they advised the applicant to first pursue an application for review, which was subsequently filed but later dismissed. The applicant contends that he could not pursue an appeal while the review application was pending, which explains the delay in bringing the present application.

6) The application is opposed. In a replying affidavit sworn on 27<sup>th</sup> June 2025, the respondent contends that the alleged breakdown in the advocate - client relationship has not been sufficiently explained and cannot justify the delay.

### **Determination**

7) The issue falling for determination is whether the applicant has satisfied the threshold for the exercise of this Court's discretion under Rule 4 of the Court of Appeal Rules, 2022.

8) Rule 4 vests in this Court wide and unfettered discretion to extend time limited by the Rules or by any decision of the Court. However, that discretion must be exercised judicially and on sound legal principles.

9) The locus classicus remains **Leo Sila Mutiso v Hellen Wangari Mwangi**

**[1999] 2 EA 231**, where the Court stated that the relevant considerations include the length of the delay, the reason for the delay, the chances of the intended appeal succeeding, and the degree of prejudice to the respondent.

10) These principles have been consistently reiterated in subsequent decisions of this Court. In **Fakir Mohamed v Joseph Mugambi &**

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***Others, [2005] eKLR***, the Court emphasized that although the discretion

under Rule 4 is unfettered, the applicant must place before the Court sufficient material upon which the Court can properly exercise that discretion.

- 11) The Supreme Court articulated similar principles in **Nicholas Kiptoo Arap Korir Salat v Independent Electoral and Boundaries Commission & 7 Others [2014] eKLR**, emphasizing that extension of time is not a right but an equitable remedy available only to a deserving party who has laid a satisfactory basis for the exercise of the Court's discretion.
- 12) More recently, this Court has reaffirmed these principles. In **Imbisi v Kakamega & 2 Others, [2024] KECA**, the Court reiterated that Rule 4 empowers the Court to extend time "*on such terms as it thinks just,*" provided the applicant lays a satisfactory basis explaining the delay.
- 13) Similarly, in **Murimi v Kabiru & 2 Others [2025] KECA**, the Court reaffirmed that an applicant seeking extension of time must satisfactorily explain the delay before the Court may exercise its discretion.
- 14) Likewise, in **Kipkemoi v Rono [2025] KECA**, the Court emphasized that applications for extension of time to lodge a notice of appeal fall squarely within the ambit of Rule 4 and must be determined on the basis of the explanation for delay and the interests of justice.
- 15) Similarly, in **Mwangi v Njoroge & Another [2025] KECA**, the Court

underscored that an applicant must demonstrate candour and provide a plausible explanation for delay before the Court can invoke its discretion under Rule 4.

16) Regarding the explanation for the delay, the applicant attributes the delay primarily to the breakdown of the advocate-client relationship with his former advocates, which resulted in his not being informed of the judgment or advised on the steps to be taken thereafter. The respondent disputes this explanation and argues that the alleged strained relationship has not been sufficiently explained.

17) The Court must however remain alive to the reality that the relationship between an advocate and client is confidential and privileged. It would therefore be inappropriate for the Court to speculate on the precise nature of that breakdown. What is evident, however, is that the applicant subsequently instructed new advocates who promptly came on record and took steps to obtain the judgment and advise the applicant on the available legal options.

18) On the question whether the delay is inordinate, under Rule 77(2) of the Court of Appeal Rules, 2022, a Notice of Appeal must be lodged within fourteen (14) days of the decision intended to be appealed against. In the instant case, the notice of appeal ought to have been lodged and served by 25<sup>th</sup> December 2024. The instant application was filed on 17<sup>th</sup> June 2025, representing a delay of approximately five months.

19) Whether delay is inordinate depends on the circumstances of each case.

In ***Mukabi v Mukabi [2004] eKLR***, the Court held that explanations

grounded in practical realities may justify delay. Likewise, in **Anastasius**

**H. Kamau v Karen Insurance Brokers Limited [2008] eKLR**, the Court

held that a delay of three months was not necessarily inordinate where a satisfactory explanation had been offered.

20) In the circumstances of this case, and taking into account the explanation offered by the applicant regarding the breakdown in the advocate-client relationship and the subsequent pursuit of review proceedings, I am not persuaded that the delay of about five months can properly be described as inordinate.

**21)** On the prospects of the intended appeal, the respondent contends that the intended appeal has no prospects of success. It is however trite that a single judge exercising jurisdiction under Rule 4 does not determine the merits of the intended appeal. As this Court stated in **Athuman Nusura**

**Juma v Afwa Mohamed Ramadhan, [2016] eKLR**, the Court must be

careful not to determine with finality the merits of the intended appeal at this stage. Suffice it to say that at this stage nothing definitive can be said regarding the prospects of the intended appeal.

22) Considering the length of the delay, the explanation offered, and the absence of demonstrable prejudice to the respondent, I am satisfied

that the applicant has laid a proper basis upon which this Court may exercise its discretion under Rule 4 of the Court of Appeal Rules, 2022.

- 23) Accordingly, the application dated 17<sup>th</sup> June 2025 is allowed.
- 24) The applicant shall file and serve the Notice of Appeal within fourteen (14) days from the date of this ruling.
- 25) The costs of the motion shall be in the intended appeal.

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

**JAMILA MOHAMMED**

.....

**JUDGE OF APPEAL**

I certify that this is a true copy of the original

Signed

**DEPUTY REGISTRAR**

