

**IN THE COURT OF  
APPEAL AT  
ELDORET**

**(CORAM: GACHOKA, J.A. - IN  
CHAMBERS) CIVIL APPLICATION NO.  
E009 OF 2026**

**BETWEEN**

**PG SECURITY LIMITED.....APPLICANT**

**AND**

**ISAAC NDIWA.....RESPONDENT**

*(An application for extension of time to lodge and serve the notice of appeal, memorandum of appeal and record of appeal out of time from the judgment and decree of the Employment and Labour Relations Court at Eldoret (M. Onyango, J.) delivered on 10<sup>th</sup> July 2025*

*in*

**ELRCA NO. E013 OF 2024)**

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**RULING**

1. The Notice of Motion dated 28<sup>th</sup> November 2025 has supplicated the provisions of **section 3A** and **3B** of the Appellate Jurisdiction Act and rule 4 of the Court of Appeal Rules 2022 seeking for leave to file and serve the notice of appeal, memorandum of appeal and record of appeal out of time in appealing the judgment of *Onyango, J.* delivered on 10<sup>th</sup> July 2025 in **ELRCA No. E013 of 2024**. The application is supported by the grounds on its face, together with the supporting affidavit of Grace Macheru, the

applicant's counsel on record.

2. The applicant contended that judgment in **ELRCA No. E013 of 2024** was delivered on 10<sup>th</sup> July 2025. Thereafter, the applicant wrote to its erstwhile advocates inquiring about the outcome of the matter. However, his inquiry only elicited a response on 13<sup>th</sup> August 2025 when he was outside the statutory limits to file the appeal. The applicant was dissatisfied with the outcome prompting it to instruct his advocates to file an appeal. However, the appeal was not filed. It is then that the applicant instructed its current firm of advocates.
3. The applicant urged this Court to allow the application for the reason that the delay was not deliberate, it was not inordinate and that its appeal had high chances of success. Finally, the applicant contended that it stood to suffer irreparable loss and damage if the orders sought are not granted. The respondent has not filed submissions.
4. I have considered the application and analyzed the law. The applicant seeks to file his notice of appeal, memorandum of appeal and record of appeal out of time. The applicant has urged this Court to invoke the discretion set out in rule 4 of the Court of Appeal Rules 2022 which is wide and not exhaustive. In determining an application of this nature, this Court is alive to the

factors taken into

account namely the merit of the appeal, the prejudice, if any, to be suffered by the respondent and the period and length of delay.

[See **Paul Wanjohi Mathenge vs. Duncan Gichane Mathenge** [2013] eKLR.

5. I have considered the reasons advanced by the applicant and the period it took to file the appeal. I find that the applicant deserves to benefit from the exercise of the Court's discretion set out in rule 4 of this Court's rules.
6. Accordingly, the applicant shall file its notice of appeal, memorandum of appeal and record of appeal within 30 days from the date of this order failing which the orders issued shall lapse automatically without any further reference to this Court. The costs of the application shall abide the outcome of the appeal.

**Dated and Delivered at Eldoret this 6th day of March, 2026.**

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

.....  
**JUDGE OF APPEAL**

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

**Signed**

**DEPUTY REGISTRAR**