



**Inspector General, National Police Service & 2 others v Owiti & another (Civil Application E667 of 2025) [2026] KECA 461 (KLR) (6 March 2026) (Ruling)**

Neutral citation: [2026] KECA 461 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAIROBI  
CIVIL APPLICATION E667 OF 2025**

**JO OKELLO, JA**

**MARCH 6, 2026**

**BETWEEN**

**INSPECTOR GENERAL, NATIONAL POLICE SERVICE ..... 1<sup>ST</sup> APPLICANT**

**DIRECTOR OF CRIMINAL INVESTIGATIONS ..... 2<sup>ND</sup> APPLICANT**

**THE HONOURABLE ATTORNEY GENERAL ..... 3<sup>RD</sup> APPLICANT**

**AND**

**GEORGE OTIENO OWITI ..... 1<sup>ST</sup> RESPONDENT**

**THE NATIONAL POLICE SERVICE COMMISSION ..... 2<sup>ND</sup> RESPONDENT**

*(An application for extension of time to file and serve Memorandum and Record of Appeal out of time against the judgement and decree of the Employment and Labour Relations Court at Nairobi (H. Wasilwa, J.) delivered on 31st October, 2024 in ELRC Cause No. E158 of 2023)*

**RULING**

1. By a Notice of Motion dated 11<sup>th</sup> November, 2025, the applicant, applied for leave to file the memorandum and record of appeal out of time against the judgment in Nairobi ELRC Petition No. E158 of 2023 delivered on 11<sup>th</sup> October, 2024.
2. The application came up for hearing on 26<sup>th</sup> February, 2026 by way of written submissions. Ms. Beatrice Akuno, from the Office of the Attorney General is on record for the Applicants while ALP Kenya Advocates is on record for the 2<sup>nd</sup> Respondent. The Notice of Hearing was duly served.
3. The Applicant's case is premised on the grounds stated on the face of the application and the supporting affidavit of the applicants herein. The 2<sup>nd</sup> Respondent has also filed a replying affidavit opposing the application.



4. Rule 4 of the Court of Appeal Rules provides:

“The Court may, on such terms as it thinks just, by order, extend the time limited by these Rules, or by any decision of the Court or of a superior court, for the doing of any act authorized or required by these Rules, whether before or after the doing of the act, and a reference in these Rules to any such time shall be construed as a reference to that time as extended.”

5. The principles that guide this Court in determining whether to extend time pursuant to Rule 4 of the Rules of this Court are now well settled and have been stated in a plethora of cases. In *Mwangi v Kenya Airways* (2003) KLR 486 at page 489 the Court stated as follows:

“Over the years, the Court has set out guidelines on what a single judge should consider when dealing with an application for extension of time under rule 4 of the rules. For instance, in *Leo Sila Mutiso v Rose Hellen Wangari Mwangi*, (Civil Application No. Nai. 255 of 1997, the Court expressed itself thus: It is now well settled that the decision whether to extend the time is essentially discretionary. It is also well settled that in general the matters which this Court takes into account in deciding whether to grant an extension of time are; first, the length of the delay; secondly, the reason for the delay; thirdly (possibly), the chances of appeal succeeding if the application is granted; and fourthly, the degree of prejudice to the respondent if the application is granted”.

6. The principles enunciated are the principles I proceed to apply in the instant case in determining whether the prayers sought by the Applicants in their Notice of Motion dated 11<sup>th</sup> November, 2025 should be granted. The Applicants’ prayers are that the Honourable Court extend time and grant leave to allow the Applicants file the memorandum and record of appeal out of time against the judgement dated 31<sup>st</sup> October, 2024 in Nairobi ELRC Petition No. E158 of 2023. The applicants further pray that the costs of this application be in the cause.

7. From the application and the supporting affidavit, the applicants are dissatisfied with the entire judgement delivered on 31<sup>st</sup> October, 2024 in NRB ELRC No. E158 of 2023, and that the intended appeal raises substantive points of law. The applicant attributes the delay in filing the notice, the memorandum and record of appeal to delay in the provision of typed proceedings which the applicants requested on 31<sup>st</sup> October, 2024. The applicants further deposed that that the failure to file record of appeal and memorandum of appeal against the disputed judgment, was occasioned by fact that, the counsel who previously handled the matter went on compassionate leave. The file was subsequently transferred to another counsel who, in the month of January, 2025, was transferred to Eldoret office and failed to bring the status of the file to the attention of the Nairobi office.

8. The applicants have drawn the attention of this Court to the case of *Leo Sila Mutiso vs Rose Hellen Wangari Mwangi* (1999) 2 EA 231, where the court held that, the relevant factors to be considered include the length of the delay, the reason for the delay, the chances of the intended appeal succeeding (whether arguable), and the degree of prejudice to the respondent.

9. In their conclusion, the Applicants submit that although there is delay on their part to file the memorandum of appeal within time, the same was not deliberate. That the intended appeal raises arguable, bona fide and triable issues. They conclude their submission by stating that the Respondent will suffer no substantial prejudice that cannot be compensated by costs if time is extended hence, it is in the interest of justice that leave be granted and that this application be allowed.



10. The 1<sup>st</sup> Respondent, the National Police Service Commission supports the application noting that the delay was not intentional and can be proved to have been caused by delays in getting copies of the proceedings and judgment which are yet to be provided.
11. The application is opposed by the 2<sup>nd</sup> Respondent, Mr. George Otieno Owiti through a replying affidavit dated 8<sup>th</sup> December, 2025 on grounds that the request for enlargement of time is misconceived and lacks merit and is brought to prejudice the Respondent. That the fruits of judgment are long overdue and subjecting the 2<sup>nd</sup> Respondent to an appeal which has been brought with unreasonable delay is not only unjust but defeats the whole purpose of litigation which must come to an end.
12. Having considered the application, the grounds in support of the application, the supporting affidavits, the responses, the submissions and the authorities cited and the law, this Court is now called upon to determine whether the Applicants have satisfied the legal threshold for grant of leave to file an appeal out of time. In determining this issue, we fall back to the principles governing extension of time. In the case of *Leo Sila Mutiso vs Rose Hellen Wangari Mwangi*, (Civil Application No. Nai. 255 of 1997, the Court expressed itself thus:

“It is now well settled that the decision whether to extend the time is essentially discretionary. It is also well settled that in general the matters which this Court takes into account in deciding whether to grant an extension of time are; first, the length of the delay; secondly, the reason for the delay; thirdly (possibly), the chances of appeal succeeding if the application is granted; and fourthly, the degree of prejudice to the respondent if the application is granted”

13. The first issue of consideration is the length of the delay. From the records, judgment was delivered on 31<sup>st</sup> October, 2024, where upon the applicants filed the notice of appeal on the same day and sought for copies of the proceedings and judgment. The applicants did not however follow through with filing of the memorandum of appeal until 11<sup>th</sup> November, 2025, when this application was brought. I find that the Applicants slept on their rights. Considering that the Applicants were dissatisfied with the judgement, they proceeded to file the notice of appeal on 31<sup>st</sup> October, 2024, the day the judgment was delivered. The applicants have not demonstrated any attempt to follow the typed proceedings as they allege.
14. Indeed, from the replying affidavit of the 2<sup>nd</sup> Respondent, on 10<sup>th</sup> December, 2024, the Court notified the applicants that the typed proceedings were ready for collection upon payment of the requisite fees. This fact is confirmed by the second respondent who has attached the communication from the court registrar as “Exhibit GOA-1”. This is a fact the applicants have not brought to the attention of the court. In fact, the applicants still deposed that they have not yet received the typed proceedings. This application for extension of time was brought on 11<sup>th</sup> November, 2025, exactly one year after the judgment was delivered and almost ten months outside the statutory timelines for filing an appeal. Ten months is such a long time considering that the notice of appeal and request for proceedings was made on the same date the judgment was delivered. The situation worsens with confirmation that the typed proceedings were available on 10<sup>th</sup> December, 2024.
15. The jurisdictional importance of filing an appeal within the prescribed timelines was succinctly stated in *Nick Salat vs Independent Electoral and Boundaries Commission & 7 Others* (Application 16 of 2014) (2014) KESC 12 (KLR); the Supreme court remarked;

“Time is a crucial component in dispensation of justice, hence the maxim: justice delayed is justice denied. It is a litigants’ legitimate expectation where they seek justice that the same



will be dispensed timeously. Hence, the various constitutional and statutory provisions on time frames within which matters have to be heard and determined.”

16. Taking into account the facts and circumstances of the case and the happenings therein, filing this application one year after the judgement and 10 months after the typed copies of proceedings and judgment were ready, amounts to inordinate delay. This is not excusable.
17. On the reasons for the delay, the Applicants submitted that the delay was occasioned by delayed typed copy of proceedings and judgment and further that counsel handling the matter previously did not communicate the status of the file to the office. It is the applicants’ case that the delay was not intentional because they had not received copies of the typed proceedings and judgment and further that there were some administrative lapses in the office. It has been submitted that copy of proceedings and judgment were ready on 10<sup>th</sup> December, 2024, a fact brought to the attention of all parties by the court registry (See “Exhibit GOA-1”). The Applicants however did not bring this to the attention of the court and are still waiting for the typed proceedings and judgment. Equity aids the vigilant, not the indolent. The applicants are indolent. The reasons given for the delay are not plausible.
18. As to whether there are chances of success, I have to consider whether there is a single arguable ground that has been raised by the Applicant. Having carefully considered the grounds set out in the motion, the appeal is arguable. An arguable point is not necessarily one that must succeed, but merely one that is deserving of consideration by the Court.
19. Finally, on the degree of prejudice, the Applicant submitted that the Respondent will not suffer substantial prejudice that cannot be compensated by costs. The Respondent on the other hand submitted that the fruits of judgment are long overdue and subjecting the 2<sup>nd</sup> respondent to an appeal which has been brought with unreasonable delay is not only unjust but defeats the whole purpose of litigation which must come to an end. There is always legitimate expectation that litigation would come to an end. I therefore find that granting leave to file appeal out of time will prejudice the Respondents.
20. For the reasons above, I am persuaded that the applicants have not persuaded this Court that their application is deserving. This Court, therefore, finds no merit in the Notice of Motion dated 11<sup>th</sup> November, 2025.
21. Accordingly, the Notice of Motion dated 11<sup>th</sup> November, 2025 is dismissed with costs.

**DATED AND DELIVERED AT NAIROBI THIS 6<sup>TH</sup> DAY OF MARCH, 2026.**

**(DR.) J. O. OKELLO**

.....

**. JUDGE OF APPEAL**

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

**Signed**

**DEPUTY REGISTRAR**

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