



REPUBLIC OF KENYA



**Mwaura v Mukonza (Civil Appeal (Application) E704 of 2024)
[2026] KECA 475 (KLR) (6 March 2026) (Ruling)**

Neutral citation: [2026] KECA 475 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPEAL (APPLICATION) E704 OF 2024
L NDOLO, JA
MARCH 6, 2026**

BETWEEN

JULIUS NJUGUNA MWAURA APPLICANT

AND

JACKSON MUKONZA RESPONDENT

(Being an application for extension of time to file and serve a notice of appeal and record of appeal in an appeal from the ruling and order of Christine Ochieng J delivered on 26th June 2024 in Machakos ELC Appeal No E009 of 2020)

RULING

1. The applicant's notice of motion dated 28th November 2024 seeks extension of time to file and serve a notice of appeal and record of appeal.
2. The applicant further asks that the notice of appeal dated 18th September 2024 and record of appeal filed on 18th September 2024 and served on 4th October 2024 be deemed duly filed and served.
3. The respondent opposes the application by his replying affidavit sworn on 5th December 2024. He depones that the ruling which is the subject of the present application, was delivered on 20th June 2024, in the presence of counsel for both parties.
4. The applicant is said to have served the respondent with a copy of a letter dated 4th July 2024 addressed to the superior court requesting for typed proceedings.
5. According to the respondent, no notice of appeal was served on his advocates. He states that a notice of appeal dated 4th July 2024 was detected in the record of appeal dated 18th September 2024 served on the respondent on 4th October 2024.



- 6. This prompted the respondent to file his own application dated 29th October 2024, seeking to strike out the notice of appeal on the ground that it was not lodged with nor signed by the Deputy Registrar of the superior court and was therefore in contravention of rules 77 and 79(1) of the Court of Appeal Rules.
- 7. The respondent further complains that the law firm of Kyalo & Associates, which has brought the application on behalf of the applicant is a stranger in these proceedings as there is no notice of change of advocates.
- 8. I need at this stage to point out that what is before me is the application for extension of time and this ruling is therefore confined to that plea only. The application is brought under rule 4 of the Rules of the Court which provides that:

The Court may, on such terms as may be just, by order, extend the time limited by these Rules, or by any decision of the Court or of a superior court, for 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.

- 9. In considering an application under rule 4, the Court exercises discretion, upon examination of the length of delay, the reason for the delay, prejudice to the respondent and arguability of the appeal.
- 10. This position was affirmed in *Leo Sila Mutiso vs. Hellen Wangari Mwangi* [1999] 2 EA 231 as follows:

“It is now well settled that the decision whether or not to extend the time for appealing 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 the appeal succeeding if the application is granted; and, fourthly, the degree of prejudice to the respondent if the application is granted.”

- 11. In his affidavit in support of the application, the applicant concedes that there were missteps in the handling of this matter by his counsel on record at the material time. The Court also notes that the pleadings are not all together elegant in nature.
- 12. However, and despite the foregoing, I am minded to render substantive justice and allow the parties to fully ventilate their respective cases before this Court.
- 13. I will therefore allow the application and admit the notice of appeal dated 18th September 2024 and record of appeal filed on 18th September 2024 and served on 4th October 2024 as duly filed, subject to payment of applicable court fees.
- 14. The costs of the application will be in the appeal.

DATED AND DELIVERED AT NAIROBI THIS 6TH DAY OF MARCH, 2026.

L.M. NDOLO

.....

JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR

