



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**Njuguna v Nyaga (Civil Application E029 of 2025)
[2026] KECA 464 (KLR) (6 March 2026) (Ruling)**

Neutral citation: [2026] KECA 464 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPLICATION E029 OF 2025**

**B ONGAYA, JA
MARCH 6, 2026**

BETWEEN

CAROLINE MUTHONI NJUGUNA APPLICANT

AND

PYTHON NJERU NYAGA RESPONDENT

(Being an application for extension of time to lodge and serve the Notice of Appeal out of time, from the Judgment and Decree of the High Court of Kenya at Kiambu (L. Kassan, J.) delivered on 3rd July, 2024 in HCCA No. 90 of 2019)

RULING

1. The applicant filed the notice of motion dated 21st January 2025. It was stated to be pursuant to Articles 159, 259(1) of *the Constitution* of Kenya, 2010, sections 3, 3A, 3B of the *Appellate Jurisdiction Act*, Cap 9 Laws of Kenya, Rule 1(2), 4, 42, 43(1) and 77 of the Court of Appeal Rules, 2022. The applicant prayed for Orders:-
 - a. That the Honourable Court be pleased to extend the time for filing and service of the Notice of Appeal dated 26th September 2024.
 - b. That upon granting prayer 1 above, the court be pleased to extend the time and/or provide timelines for filing the Record of Appeal.
 - c. That the Notice of Appeal dated 26th September 2024 and filed on 27th September 2024 be deemed properly filed and served.
 - d. That costs of this application to abide the outcome of the intended appeal.
 - e. That this Honourable Court be pleased to issue any other or further orders in the interest of substantive justice.



2. The application is based on grounds as stated in the motion and is supported by the applicant's affidavit sworn on 21st January 2025. The applicant urges as follows:-
- a. The respondent herein filed Kiambu High Court Civil Appeal No. 90 of 2019 ("the Kiambu High Court Appeal") against the Judgment in Thika MCCC No. 1162 of 2016. Since the Kiambu High Court Appeal commenced before the establishment of the Judiciary Case Tracking System (CTS), the applicant and her advocates on record were never mapped on the CTS and consequently never received any real-time notices from the court regarding the case's activities throughout the life of the said appeal.
 - b. On 15.02.2024, parties in the Kiambu High Court Appeal appeared before the Court to confirm filing of submissions and were to appear for a mention on 28.03.2024 to take a judgment date. When the Court did not sit on 28.03.2024, the said appeal was scheduled for a further mention on 20.06.2024, but the Court did not sit, and the matter was again scheduled to be mentioned on 17.10.2024. Therefore, the applicant and her advocates were under the impression that the said appeal would be mentioned on 17.10.2024 to take a judgment date.
 - c. On 07.08.2024, the applicant's advocates on record received a Judgment Notice dated 06.08.2024 via email from the respondent's advocates, informing them that the Kiambu High Court Appeal had been fixed for judgment on 14.08.2024. Notably, the respondent's advocates never indicated the date or the means through which they got a judgment date for the said appeal, in the absence of the applicant and her advocates on record.
 - d. The Kiambu High Court Appeal was not listed for judgment on 14.08.2024 and the court file was unavailable. Before the applicant could find out the status of the said appeal manually in the physical High Court Civil Registry at Kiambu, her advocates received, via email, a letter dated 09.09.2024 from the respondent's advocates, with the notification that judgment in the Kiambu High Court Appeal was delivered on 03.07.2024. It was disturbing that the judgment had been entered and delivered more than two months prior to the respondent's emails dated 07.08.2024 and 09.09.2024 and, in the circumstances that the applicant had not been notified by the High Court about the date set for such delivery.
 - e. The High Court at Kiambu and the respondent had failed to notify the applicant that the said appeal was scheduled for judgment, or conversely, and promptly, that judgment had already been entered. Further, it is unclear why the Judgment was delivered by Justice L. Kassan, yet the presiding judge for the Kiambu High Court Appeals was Lady Justice Mshila Abigail of Kiambu High Court No. 2.
 - f. Subsequently, the applicant filed on 27.09.2024 the Notice of Appeal dated 26.09.2024, albeit out of time, because of the antecedent facts. It was signed by the Deputy Registrar as lodged at the High Court on 02.10.2024. The conduct of the respondent contributed to the delay in filing and serving the notice of appeal, and this Court ought to exercise its unfettered discretion in favour of the applicant. The delay is not inordinate or lengthy, and the applicant stands to suffer prejudice if this Court declines to enlarge time to file and serve the notice of appeal and record of appeal.
 - g. The applicant is unable to pursue an appeal against the judgment delivered in the Kiambu High Court Appeal, unless this Court extends or enlarges the time within which she can file and serve the notice of appeal and record of appeal.
 - h. The intended appeal is prima facie arguable with high chances of success, as shown in the annexed draft memorandum of appeal.



3. The respondent filed a replying affidavit sworn by Penina Oloo on 7th August 2025. The application is opposed upon the following grounds:
 - a. The instant application has been brought in bad faith with an attempt to keep the respondent in protracted litigation over a matter long heard and determined. It should therefore be dismissed with costs to the respondent.
 - b. The applicant has not advanced any reason to explain the delay in filing the Notice of Appeal and the instant application.
 - c. The record of the High Court file will demonstrate that the applicant's advocates filed several documents in court and even appeared in court on behalf of the applicant to take directions on the appeal. The applicant has thus been fully aware of the activities in the appeal at all material times.
 - d. The allegation that the applicant was never made aware of the judgment date is immaterial because from 2023 onwards, the registry, through the Judiciary CTS, has been updating dates automatically onto the system, unlike the old system where a party would invite the other to fix a date at the registry. Further, the applicant, having had the judgment from the lower court appealed against, nevertheless, failed to follow up the appeal until the delivery of judgment, just in case, the applicant needed to appeal and within the prescribed period.
 - e. Even after the respondent informed the applicant through the letter dated 09.09.2024 that judgment had been delivered in the said matter, the applicant lodged the Notice of Appeal in the Kiambu High Court on 02.10.2024. The applicant prolonged the delay by waiting until 21.01.2025 to draw the application for extension of time and until 25.01.2025 to file the said application. The applicant only filed the application for extension of time nine (9) days after receipt of the respondent's letter dated 16.01.2025, following up on the contents of the respondent's letter dated 09.09.2024.
 - f. There having been a delay in the first instance in filing the Notice of Appeal, the applicant was expected to speedily seek an extension of time, but she instead continued the delay.
 - g. The appeal does not raise any serious issue for consideration by this Court since the decision of the trial Court was well-reasoned and just. Allowing the application would be an injustice to the respondent, and it should therefore be dismissed.
4. The application was listed on 26.02.2026 as a chamber matter before me in absence of both parties. By a hearing notice dated 12.02.2026 the parties were notified to comply with the directions as to service and filing of submissions by 26.02.2026. The applicant filed the submissions dated 16.02.2026. The respondent appears not to have filed submissions.
5. I have considered the material on record including the applicant's submissions dated 16.02.2026. It is the applicant's case that the delay in filing and serving the Notice of Appeal arose due to circumstances beyond her control. The applicant's further case is that Kiambu High Court Civil Appeal No. 90 of 2019 was heard in the absence of the applicant and her advocates on record mainly due to non-mapping on the Judiciary Case Tracking System (CTS). Further and consequently, the applicant or her advocates did not receive timely notices regarding the judgment, and were only informed of its delivery via the respondent's email dated 07.08.2024 and letter dated 09.09. 2024. I find that upon the material on record, the applicant's assertions about failure to be notified about the date of delivery of the judgment and prompt service of the judgment are not rebutted at all.



6. The respondent urges that the applicant has failed to explain the delay from 07.08.2024 and subsequently from 09.09.2024 until 27.09.2024 (when the notice of appeal was filed in the superior court), being cumulatively about 20 days, prior to taking the crucial step to file the notice of appeal in the superior court. Further, the respondent's case is that the applicant has not explained the delay from 27.09.2024 to 21.01.2025 when the instant application was subsequently drawn and filed on 25.01.2025.
7. What is the operative delay for purposes of filing a notice of appeal? Rule 77 of the Court of Appeal Rules provides in part:
 - “(1) A person who desires to appeal to the Court shall give notice in writing, which notice shall be lodged in two copies, with the registrar of the superior court.
 - (2) Each notice under subrule (1) shall, subject to rules 84 and 97, be lodged within fourteen days after the date of the decision against the decision for which appeal is lodged.”
8. In the instant application, it is stated that the judgment by the superior court was delivered on 03.07.2024. The 14 days prescribed for lodging a notice of appeal lapsed on or about 17.07.2024. The earliest the applicant learned about the delivery of the judgment was by the email of the respondent's counsel dated 07.08.2024, long after the 14 days had lapsed.
9. I have considered that it has been established that the superior court or the respondent herein failed to notify the applicant or the applicant's advocates the date the judgment was delivered and subsequently the applicant remained uninformed until the email and letter by the respondent's counsel dated 07.08.2024 and 09.09.2024, respectively. I find that lack of service of the judgment notice and information about delivery of the judgment through prompt service of the judgment is indeed a strong reason in favour of the applicant. The applicant having learned about delivery of the judgment long after the lapsing of the 14 days prescribed for lodging a notice of appeal, the failure to serve the judgment notice and to promptly communicate the delivery of the judgment goes to the root of the applicant's failure to comply with rule 77 of this Court's rules.
10. It was said that the applicant or applicant's counsel should have learned about the date of the delivery of judgment or the fact of the delivery by checking on the CTS platform. However, no material before this court suggests that the information was indeed posted on the CTS.
11. Rule 4 of the Court of Appeal Rules states;
 - “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 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.”
12. Accordingly, the court exercises the discretion under the rule based on the specific circumstances of each case. The Court has considered the conduct of the applicant after learning about delivery of the judgment and the purportedly unexplained delay as urged for the respondent. By the letter dated 09.09.2024 the respondent's counsel had informed the applicant that the effect of the judgment was to set aside the lower court's award as stated in the letter and to a computed sum of Kshs.1, 568,049.00. The letter requested the applicant's counsel to tabulate their costs to enable the respondent's counsel get instructions in that regard. By letter dated 16.01.2025 counsel for the respondent informed counsel



for the applicant that the superior court had reduced the award to Kshs.1, 568, 049.00 and there had been a deposit of Kshs. 2,337,817.90 as security for an order of stay of execution so that in view of the superior court judgment, there was an over payment of Kshs.769,768.90. Counsel for the respondent requested to be addressed on the issue of reimbursement for the matter to be closed. It is after that letter of 16.01.2025 that it appears the applicant moved to file the instant application.

13. In the circumstances, as urged for the respondent, it may appear that the instant application was a mere afterthought to delay the conclusion and closure of the matter in terms of the superior court's judgment. That may appear to be so, especially in view of the purportedly unexplained conduct of the applicant after learning about the delivery of the judgment.
14. Nevertheless, I return that such purported delay as urged for the respondent diminishes as feeble as is overridden by the initial lamentation that the judgment notice did not issue or that the judgment was not promptly served with the consequence that the prescribed 14 days for lodging the notice of appeal had already lapsed by the time the applicant embarked on the mitigation measures.
15. As submitted for the applicant, in *Fakir Mohamed vs Joseph Mugambi & 2 Others* [2005] KECA 340 (KLR) (P.N. Waki, J.A) it was held thus, "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 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 Appl. NAI. 255 of 1997 (UR), *Mwangi vs Kenya Airways Ltd* [2003] KLR 486, *Major Joseph Mwereri Igweta vs Murika M'Ethare & Attorney General*, Civil Appl. NAI. 8 of 2000 (UR) and *Murai vs Wainaina_ (No 4)* [1982] KLR 38."
16. The applicant has established that he will suffer serious prejudice in view of the root reason for the delay being not attributable to the applicant. It was completely impossible for the applicant to comply with the timelines for lodging and serving the notice of appeal. Despite the respondent's case of the applicant's purported and alleged delay after the period for lodging the notice of appeal had already lapsed, the applicant's delay on the whole is found excusable. The effective delay is found to have primarily been due to the manifest injustice of failure to serve a judgment notice and thereafter, the further failure to promptly serve the judgment that had been delivered in her absence. In any event the respondent has not established prejudice if the application is allowed save the argument that litigation ought to come to an end with a closure to the dispute. It is my view that the closure should come only with due and complete fair chance of the parties to access justice.
17. Accordingly, the application will be allowed. Time has run since the applicant learned about the delivery of the judgment and it should be fair that the appeal is instituted and the record of appeal filed within thirty days from the date of this ruling. In conclusion the application dated 21.01.2025 is hereby determined with orders:
 1. Time is hereby extended for filing and service of the notice of appeal herein dated 26.09.2024, filed on 27.09.2024 and lodged in the superior court on 02.10.2024 and which notice of appeal is hereby deemed duly filed and served accordingly.
 2. Time is accordingly extended and the record of appeal be filed within 30 days from the date of this judgment.
 3. The costs of the application to abide the outcome of the intended appeal.



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

B. ONGAYA

.....

JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR

