

**IN THE COURT OF
APPEAL AT
NAIROBI**

**CORAM: JAMILA MOHAMMED, J.A. (IN
CHAMBERS)) CIVIL APPLICATION NO. E320 OF
2025**

BETWEEN

JARED JUMA ONGETA.....APPLICANT

AND

GODANA GUYO ABUDO.....RESPONDENT

(Being an application for extension of time to file and serve the Record of Appeal out of time from the judgment of the High Court of Kenya at Nairobi (Mrima, J.) delivered on 12th March 2025

in

HCCC No. E858 of 2023)

RULING

Background

1. The application dated 15th May 2025, expressed to be brought pursuant to **Rule 4** of the **Court of Appeal Rules, 2022**, seeks an order extending time within which to serve the Notice of Appeal and that the costs of the application be provided for. The application is supported by the affidavit sworn on the same date by **Jared Juma Ongeta** (the applicant).

Godana Guyo Abudo is the respondent herein.

2. The background to the application is brief. The High Court delivered a ruling in favour of the respondent awarding the sum of Kshs.300,000/= together with costs and interest.
3. Being dissatisfied with that outcome, the applicant instructed new counsel to come on record and lodge an appeal against the impugned ruling. The applicant explains that it took some time to obtain his file from his former advocates and that the file was eventually released to the current firm of advocates on 30th March 2025, following which a consent to come on record was forwarded to the new advocates. According to the applicant, the delay, though regrettable, was occasioned by the procedural nuances attendant upon the change of advocates and the process of obtaining the file from the previous advocates. It is further deposed that the record of appeal has substantially been prepared, save for the certified proceedings which are expected shortly, and that the intended appeal raises arguable issues with high prospects of success.
4. The application is opposed. In a replying affidavit sworn on 9th January 2026, the respondent contends that the applicant has no right of appeal, the genesis of the dispute having been in the Small Claims Court. The respondent further contends that the applicant has not annexed a draft memorandum of appeal, that the intended appeal is therefore not demonstrably arguable, and that the applicant's new

advocates did not

require the physical file from the former advocates in order to lodge or serve the notice of appeal.

Determination

5. The single issue for determination is whether the applicant has met the threshold for the grant of extension of time under Rule 4 of the Court of Appeal Rules, 2022.
6. Rule 4 of the Court of Appeal Rules vests this Court with wide and unfettered discretion to extend time limited by the Rules or by any decision of the Court. However, although the discretion is wide, it must be exercised judicially and on sound legal principles.
7. The guiding principles were stated in **Leo Sila Mutiso v Hellen Wangari Mwangi [1999] 2 EA 231**, where the Court held that in considering an application for extension of time the Court will generally consider the length of delay, the reason for the delay, the chances of the intended appeal succeeding if the application is granted, and the degree of prejudice to the respondent.
8. The Court has consistently reiterated these principles in subsequent decisions. In **Fakir Mohamed v Joseph Mugambi & 2 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.

9. The Supreme Court in **Nicholas Kiptoo Arap Korir Salat v Independent**

Electoral and Boundaries Commission & 7 Others [2014] eKLR

further emphasised that extension of time is not a right but an equitable remedy available only to a deserving party who has laid a satisfactory basis.

10. In **Kazungu v Rapam Limited [2023] eKLR** the Court underscored that

an applicant must provide a plausible and satisfactory explanation for the delay before the Court can exercise its discretion.

11. The applicant attributes the delay to the change of advocates and the time taken for the new advocates to obtain the physical file from the former advocates.

12. The respondent on the other hand contends that the applicant's advocates did not require the physical file in order to file or serve the notice of appeal and further points out that the notice of address filed by the current advocates bears the same physical and email address as the former advocates.

13. While it is true that a notice of appeal may be lodged without the benefit of the entire physical file, the Court cannot ignore the practical realities attendant upon transition between advocates, particularly where incoming advocates must familiarise themselves with the matter before taking procedural steps.

14. I must next consider whether the delay in question is inordinate.

15. Under Rule 77(2) of the Court of Appeal Rules, 2022, the Notice of Appeal must be filed within fourteen (14) days from the date of the decision. In the present case, the notice of appeal was filed on 13th May 2025 but ought to have been filed by 26th March 2025, representing a delay of approximately forty-eight (48) days.

16. In the circumstances of this case, and considering the explanation given regarding the change of advocates, I am not persuaded that the delay of 48 days can properly be described as inordinate.

17. The respondent has also taken issue with the failure by the applicant to annex a draft memorandum of appeal. While it is good practice for an applicant to annex a draft memorandum of appeal to demonstrate arguability, failure to do so is not necessarily fatal to an application for extension of time.

18. It is also trite that a single judge exercising jurisdiction under Rule 4 does not determine the merits of the intended appeal. As observed 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. At this stage therefore, nothing definitive can be said regarding the prospects of the intended appeal.

19. Considering the totality of the circumstances, including the length of delay, the explanation offered and the absence of demonstrable prejudice to the respondent, I am satisfied that the applicant has laid a sufficient basis upon which this Court may exercise its discretion under Rule 4 of the Court of Appeal Rules, 2022.

20. Accordingly, the application dated 15th May 2025 is allowed. The applicant shall file the appeal within fourteen (14) days from the date of this ruling.

21. The costs of the motion shall be in the intended appeal.

Dated and delivered at Nairobi this 6th day of March, 2026.

JAMILA MOHAMMED

.....

JUDGE OF APPEAL

I certify that this is a
true copy of the original

Signed

DEPUTY REGISTRAR