



**Makau v Koros (Suing as the Legal Representative and Administrator of the Estate of Wilson Kimtai Kipkoros aka Willy Kimutai (Deceased)) (Civil Application E378 of 2025) [2026] KECA 395 (KLR) (27 February 2026) (Ruling)**

Neutral citation: [2026] KECA 395 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAIROBI  
CIVIL APPLICATION E378 OF 2025  
W KARANJA, JA  
FEBRUARY 27, 2026**

**BETWEEN**

**ALFONCE MUTUA MAKAU ..... APPLICANT**

**AND**

**JAVAN KOROS (SUING AS THE LEGAL REPRESENTATIVE AND ADMINISTRATOR OF THE ESTATE OF WILSON KIMTAI KIPKOROS AKA WILLY KIMUTAI (DECEASED)) ..... RESPONDENT**

*(An application for extension of time to file and serve the Notice of Appeal against the Judgment of the High Court at Machakos (N. Adagi, J.) dated 27th May 2025 in HCCC No. E147 of 2022)*

**RULING**

1. The applicant has moved this Court under Rule 4 of the Court of Appeal Rules seeking extension of time within which to file and serve the notice of appeal against the judgment delivered in Machakos High Court Civil Appeal No. E147 of 2022.
2. The application is premised on 3 grounds on its face, and it is supported by the affidavit sworn by Alphonse Mutua Makau on 24<sup>th</sup> June 2025.
3. The pith and substance of the said grounds and depositions is that the applicant was dissatisfied with the said judgment as a result of which he sought instructions from his insurers on the question whether or not to file the appeal. He states that it took time for the insurance company to deliberate and communicate its decision to him, hence the delay because, by the time he received the go ahead, the 14 days had lapsed.
4. He deposes that after receiving the go-ahead, he filed the application without delay. He maintained that the explanation he has given for the delay is plausible and, therefore, excusable.



5. He informs the Court that he had already paid Ksh.1,369,326.00 to the respondent as a condition for stay pending hearing of the appeal before the High Court.
6. He deposes, further, that it will be in the interests of justice for him to be allowed time to challenge the judgment, and that he has an arguable appeal with good chances of success. He says that the respondent will not suffer any prejudice and urges the Court to allow the application.
7. The application is opposed through the replying affidavit sworn by Solomon Kivuva the respondent's advocate on record.
8. According to the respondent, the applicant was in court when the judgement was delivered and he was, therefore, aware of the timelines within which to file the notice of appeal which he did not do. He told the Court that post judgment, the applicant engaged them in negotiations on the settlement of the decretal amount and the costs.
9. According to him the filing of the appeal was an afterthought and it should not be allowed as this matter has been in court since the year 2020. It is learned counsel's view that the applicant has not demonstrated that he has an arguable appeal and that he is guilty of laches, and the application is a complete waste of precious judicial time and it should, therefore, be dismissed.
10. Both parties filed submissions in support of their rival positions. It is worth of note that the applicant has also annexed to his affidavit the record of appeal as a demonstration that the appeal is ready for filing and serving and is not, therefore, a waste of Court's time as alleged by counsel for the respondent.
11. I have considered the application, the rival affidavits by the parties and their submissions.
12. The law in this area is settled. Under Rule 4 of the Court of Appeal Rules the Judge has unfettered discretion to extend time. The discretion though unfettered is, nonetheless, not exercised on a whim, and the Court is guided by several time honoured principles. I have been guided by the said principles as set out in a plethora of decisions of this Court. See *Fakir Mohammed v Joseph Mugambi & 2 others* [2005] eKLR (Civil Application No. Nai.332 of 2004) where the Court held that;

“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, (possible) 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 factor.”

See also *Mwangi v Kenya Airways Ltd* (2003) KRL 486.

13. The Court has to consider the issues raised by both sides and determine if the parameters set out in the above cases have been met.
14. I note that this application was filed about six weeks after delivery of the said judgment. It is my considered view that this delay is not inordinate and the reasons given for the delay, that the applicant had to seek advice from the insurers, and due to the internal mechanisms, it took some time, the explanation is not unreasonable and I find it plausible. The same can be countenanced. I note, further, that the applicant had already deposited the amount he stated as a condition for stay, and I hold the view that the respondent will not be inconvenienced or prejudiced if the applicant is allowed to pursue his appeal.



15. Accordingly, the application succeeds, and I hereby allow it and order that the applicant is given 14 days from the date hereof to file and serve the Notice of appeal. Since the record of appeal is ready, I order the same be served on the respondent within 14 days of service of the Notice of appeal, failing which these orders will automatically stand vacated.

16. Costs of the application will be in the appeal.

**DATED AND DELIVERED AT NAIROBI THIS 27<sup>TH</sup> DAY OF FEBRUARY 2026.**

**W. KARANJA**

**JUDGE OF APPEAL**

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

Signed

**DEPUTY REGISTRAR.**

