

**IN THE COURT OF APPEAL
AT NAIROBI
CIVIL APPLICATION NO. E781 OF
2025 (CORAM: ONGU'DI, JA (IN
CHAMBERS))**

BETWEE

N EMBAKASI RANCHING

COMPANY

LIMITED.....APPLICANT

AND

OH-DAE (KENYA)LIMITED.....RESPONDENT

(Being an appeal from the judgment of (M.N. Gicheru, J) dated 14th

May at

in

Kajiado ELC Case No. E071 of 2021)

RULING

1. This ruling is in respect of the Notice of Motion dated 18th December, 2025 where the applicant seeks for the following orders:

- (i) That the honourable court be pleased to grant the application on extension of time to serve the notice of appeal against the judgment of the learned honourable Justice M.N. Gicheru delivered on 14th May 2025 in the Environment and Land Court at Kajiado in ELC Case No. E071 of 2021.**
- (ii) That this honourable court be pleased to grant the applicant an extension of time to file and serve the record of appeal against the judgment of the learned honourable Justice M.N. Gicheru on 14th May 2025 in the Environment and Land Court at Kajiado in ELC Case No. E071 of**

2021.

2. The application is brought under Rules 4, 43, 44(1), 55 (1), 79 (2) and 84 of the Court of Appeal Rules and is premised

on the grounds on its face plus the supporting affidavit of Phideli Wangare, a director of the Applicant.

3. The Applicant's case is that the impugned judgment was delivered on 14th May, 2025 and a Notice of Appeal lodged on 23rd May, 2025. The said notice is yet to be served on the Respondent. In the grounds and supporting affidavit the applicant has given a sequence of actions that do not include the said service. It is averred that the Applicant's advocate only learnt of the failure to serve on 16th December, 2025. This was when an inquiry was made by the deponent on the position of the appeal. It was then that the applicant learnt of non-service of the Notice of Appeal on the Respondent.
4. The Applicant blamed the delay on the typing of proceedings and issuance of the certificate of delay and the taxation of the party and party bill of costs. Further, that an omission occurred in its advocate's office, and the Applicant was not to blame.
5. The respondent filed a replying affidavit through its director Hoik Park. The same is dated 5th February, 2026. He opposed the application on behalf of the Respondent. He averred that the application is devoid of merit and

constitutes an abuse of

the court process and should be denied by the court.
He

further deponed that no substantive explanation had been given to show why the Notice of Appeal had not been served as per the Rules. He asked the court to dismiss the application.

6. The Applicant's submissions were filed by Tim Kariuki & Co. Advocates and are dated 24th February, 2026. Counsel identified the main issue for determination by this court to be whether or not to grant the Applicant an extension of time to serve a Notice of Appeal and lodge the record of appeal out of time. He well cited the following cases which set out the principles to be applied in cases seeking extension of time to file an appeal. These are:

- (i) Leo Sila Mutiso Vs. Hellen Wangari Mwangi [1999] 2 EA 231.**
- (ii) Fakir Mohammed Vs. Joseph Mugambi & 2 Others [2005] eKLR.**
- (iii) Andrew Kiplangat Chemoingo Vs. Paul Kipkorir Kibet [2018] eKLR**

7. Based on the above authorities, Counsel submitted that the delay herein is excusable for the reason that an omission occurred in its office when the file was mistakenly filed in the cabinet without any further action being taken. This he contended was not a deliberate omission and is excusable.

8. He finally urged that there was a delay in typing and release of certified proceedings which also contributed to the scenario prevailing. He thus prayed for the application to be allowed.
9. The respondent filed submissions through Kinyanjui, Kimani and Company Advocates which are dated 24th February, 2026. Counsel relied on the replying affidavit by Hoik Park. He identified the one issue for identification to be whether the Applicant had established any sufficient cause to warrant extension of time. On this he referred to the principles guiding the exercise of the court's discretion in extension of time as settled in the case of **Nicholas Kiptoo Arap Korir Salat Vs. Independent Electoral & Boundaries Commission & 7 Others [2014] KESC 12.**
10. Counsel submitted that the Applicant had failed to provide a satisfactory explanation for the delay. Further, that there was no disclosure nor affidavit of the staff member who kept the file in the cabinet and what steps were taken to remedy the situation. He referred the court to the case of **Bi Mach Engineers Limited Vs. James Kahoro Mwangi [2011] eKLR** where it was held:

“Mistakes by counsel should not automatically be accepted as a ground for extension of time. The court must consider the circumstances of each case on its own.”

11. Additionally, Counsel referred to **Hako Agencies Limited Vs.**

Wilfred Odhiambo Musingo, [2015] eKLR where the Court of Appeal stated:

“It is not enough for the applicant to simply blame an advocate, a plausible and satisfactory explanation must be given.”

Counsel submitted that the delay of service in this case is inordinate. That the application was only filed after the respondent filed their bill of costs which to him was an afterthought meant to impede the respondent from enjoying the fruits of the judgment.

12. Finally, Counsel contended that the respondent will be prejudiced if the leave sought is granted, the reason being that the taxation process is underway and warrants of attachment have already been issued. To him, delay to procure proceedings is not reason for failure to serve a Notice of Appeal. He thus submitted that no good reason for the

delay had been given by the applicant.

13. After careful consideration of the Notice of Motion, grounds, affidavits and both submissions, I find the main issue for determination to be whether the Applicant has satisfied the principles for extension of time to serve the Notice of Appeal and Record of Appeal. On this, the court is guided by the principles set out in the cases cited by both counsel in particular the case of **Nicholas Kiptoo Arap Korir Salat** (supra).
14. Rule 79 (1) of the Court of Appeal Rules on service of Notice of Appeal on Persons Affected Provides:
“An intended appellant shall, before or within seven days after lodging notice of appeal under rule 77, serve copies of the notice on all persons directly affected by the appeal: Provided that the court may, on application which may be made ex parte, within seven days after the lodging of the notice of appeal, direct that service need not be effected on any person who did not take part in the proceedings in the superior court.”
15. It is clear that the Applicant was to serve the Respondent who had participated in the superior court proceedings within seven (7) days after lodging the Notice of Appeal.
The notice

in this case was filed on 23rd May, 2025. The same ought to

have been served on or before 30th May, 2025 which is not the case here hence the present application.

16. The Applicant herein has given a long list of activities it was involved in after lodging the Notice of Appeal herein. The application herein is dated 18th December, 2025. The applicant confirms being in the picture of the following:

- **The typed proceedings and judgment were certified on 29th July 2025 and sent to counsel on 5th August 2025.**
- **Certificate of delay was issued on 1st October 2025 and sent to counsel on 7th October 2025 (PW8).**
- **Bill of costs dated 30th June 2025 (PW9) and notice of taxation dated 30th June 2025 (PW10) was served on them.**
- **Ruling on taxation of party and party bill of costs (PW11) delivered on 24th September 2025.**

17. Counsel claims that because the relevant file had been locked up in a cabinet in their office, they were not able to serve the Notice of Appeal. My simple question is what action counsel took when he received the bill of costs in June/July, 2025, the certified proceedings and judgment in August 2025, certificate of delay in October 2025, and Ruling on taxation in September 2025? He wants to tell this court that he never looked for the said file in his office to file these documents and check on its status until 16th December, 2025 when Phideli Wangari allegedly called to

inquire on the status of

the appeal? Was any skeleton file opened to keep these documents? The explanation given does not just add up. I therefore find that the Applicant has failed to give a satisfactory explanation for the delay of two hundred and five days (22nd May 2025-17th December 2025), in serving the Notice of Appeal.

18. Secondly, the Applicant did not file any proposed grounds of appeal for this court to see if any arguable issue/issues had been raised.
19. In view of the above I find that the Notice of Motion dated 18th December 2025 does not meet the standard required for extension of time provided for under Rule 4 of the Court of Appeal Rules, 2022.
20. The upshot is that the said application lacks merit and is dismissed with costs to the Respondent.

It is so ordered.

Dated and delivered at Nairobi this 13th day of March 2026.

H. ONG'UDI

.....
JUDGE OF APPEAL

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

Signed

DEPUTY
REGISTRAR.