



REPUBLIC OF KENYA



KENYA LAW
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**Kariuki v Instapumps Engineering Ltd (Civil Application
E495 of 2025) [2026] KECA 507 (KLR) (13 March 2026) (Ruling)**

Neutral citation: [2026] KECA 507 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPLICATION E495 OF 2025**

M SILA, JA

MARCH 13, 2026

BETWEEN

DANIEL KARIUKI APPELLANT

AND

INSTAPUMPS ENGINEERING LTD RESPONDENT

*(An appeal from the judgment of the Employment and Labour Relations Court at
Nairobi (Njagi Marete, J.) dated 30th October 2014 in ELRC No. E259 of 2021)*

RULING

1. The application before me is that dated 11 August 2025. It is said to have been filed pursuant to Sections 79G and 95 of the *Civil Procedure Act* and all other enabling provisions of the law. The orders sought are as follows:
 1. That the proposed appellant be granted leave to appeal out of time against the whole judgment of the Hon. Justice D.K Njagi Marete, delivered on 30th October 2024, at Nairobi.
 2. That the Notice of Appeal and Memorandum of Appeal annexed hereto be deemed as duly filed and served upon payment of the request (sic) filing fees.
 3. That the costs of this application be provided for.
2. The application is based on the following grounds:
 - i. That the judgment herein was delivered on 30th October 2024, and immediately thereafter the claimant requested for a copy of the proceedings and decree so as to appreciate the reasoning of the court and thereby make an informed decision on whether or not to lodge an appeal.



- ii. It took time and several physical follow-ups with the Registry to get the copy of the judgment as it was never uploaded in the Case Tracking System to advise and get instructions from the client.
 - iii. By the time the sufficient instructions could be obtained from the proposed appellant the time allowed to file an appeal had run out.
 - iv. Further, after the proceedings were ready for collection the physical file went missing.
 - v. That the proposed respondent is unlikely to suffer any prejudice.
 - vi. The delay is not so inordinate or so great as to be inexcusable.
3. The application is supported by the affidavit of Winnie Chepngetich who has deposed that she is counsel in conduct of the matter for the applicant. She avers that she requested for typed proceedings and has annexed a letter dated 2 September 2024. She has also annexed another letter dated 26 November 2024 asking for the decree. She deposes that it took time to get a copy of the judgment as it was never uploaded in the CTS. Also annexed is a notice of appeal but which does not indicate whether or not it was ever lodged. There is also annexed a draft Memorandum of Appeal and the judgment.
4. I have not seen anything to oppose the motion but that does not mean that it must be allowed. The court needs to be persuaded that it needs to exercise its discretion in favour of the applicant. The matters that are important for consideration in an application such as this were considered in the case of *Fakir Mohamed v Joseph Mugambi & 2 others* [2005] KECA 340 (KLR), where Waki, JA commented as follows:

“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. 8/2000 (ur)* and *Murai v Wainaina (No 4)* [1982] KLR 38.”

5. As may be seen above, the following may be significant factors:
- a. The period for the delay;
 - b. The reason for the delay;
 - c. Possibly the chances of the appeal succeeding;
 - d. The degree of prejudice to the respondent;
 - e. The effect of delay on public administration.
 - f. The importance of compliance with time limits;
 - g. The resources of the parties;
 - h. Whether the matter raises issues of public importance.



6. I have in mind the foregoing as I consider the application.
7. But before I go to the substance of the application, I think it is important that I make clear that Section 79 and 95 of the *Civil Procedure Act*, Cap 21, Laws of Kenya, which are cited on the body of the application herein, do not apply to this court when handling an application for extension of time to lodge an appeal out of time. What is operative is Rule 4 of the Court of Appeal Rules, 2022. I think counsel needs to take note of that when drafting applications such as these in future. Let me now get to the substance of the matter.
8. Starting with the period of delay, I observe that the judgment was delivered on 30 October 2024. It means that this application is coming more than 9 months from the date of the judgment. The applicant states that it took time to obtain a copy of the judgment as it was not uploaded to the CTS. The affidavit is however silent as to when exactly the copy of the judgment was received and I find that there is non-disclosure of a material fact. Without disclosing when the judgment was received, this court is unable to deliberate on whether the 9 months delay is justifiable.
9. I am also not persuaded as to the reasons for the delay. It is said that the physical file went missing but I see no correspondence to that effect. Without proof, I am unable to consider this as a genuine reason for the delay. I also find it curious that the letter seeking proceedings is dated 2 September 2024 while the judgment was delivered on 30 October 2024. It is not explained whether this is an error or whether the proceedings had been asked for before the judgment. If they had been asked for before the Judgment then I find it difficult to believe the applicant's claim that the file had gone missing.
10. I think given the lacunae in the revelation of the time when the judgment was uploaded and the failure to adequately explain the delay, it would be imprudent to exercise discretion in favour of the applicant.
11. The result is that I find no merit in this application and it is hereby dismissed. Since the respondent did not bother to oppose it, I make no orders as to costs.

Orders accordingly.

DATED AND DELIVERED AT NAIROBI THIS 13TH DAY OF MARCH 2026.

MUNYAO SILA

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JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR.

