

**IN THE COURT OF
APPEAL AT
NAIROBI**

(CORAM: MUNYAO, J.A (IN CHAMBERS))

CIVIL APPLICATION NO. NAI. E658 OF

2025 BETWEEN

GEOFFREY NGARI KUIRA.....APPLICANT

AND

MARTHA WANGUI KARANJA 1ST

RESPONDENT THE ADMINISTRATORS OF THE

ESTATE OF JOHANES KARANJA 2ND RESPONDENT

(An application for extension of time to file notice and record of appeal out of time from the judgment, orders and decree of the High Court at Nairobi (Moses Ado, J.) dated 24th September 2025

in

Civil Case No. 169 of 2013)

RULING

1. The application before me is that dated 12 November 2025 and said to be brought pursuant to **Rule 4** of the **Court of Appeal Rules, 2010, Sections 1A and B, and 3A** of the **Civil Procedure Act, Order 50** of the **Civil Procedure Rules, and Articles 47, 50 (1) and (2) of the Constitution**. The prayer sought in the application is for extension of time to file a Notice of Appeal out of time. The respondents have not filed anything to oppose the motion.

2. The applicant was the plaintiff in the suit before the High Court and among the issues in dispute was the shareholding and operation of a Private School known as **Busara Forest View Academy**. After hearing the parties, the court delivered its Judgment on 24 September 2025. No notice of appeal was filed within the 14 days stipulated in **Rule 77** of the **Court of Appeal Rules, 2022**. Instead, a notice of appeal was filed on 31 October 2025, which is 37 days from the date of the judgment and 23 days out of time.
3. In the supporting affidavit, the applicant deposes that after delivery of the Judgment, he took time to carefully study, analyse, and seek legal advice. He also deposes that he is an old man of 81 years old.
4. I have considered the application. The principles applicable are more or less now settled as stated by Waki J.A in the case of **Fakir Mohamed v Joseph Mugambi & 2 others [2005] KECA 340 (KLR)**, where he 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. I have taken into account the above principles. First, on the time of the delay, I observe that the applicant was late by 23 days. It is a lengthy delay. I will however take it that it is explained by the applicant especially given that the respondent has not challenged the reasons given. I also see that the decision of the High Court is significant on the rights of the parties and I would not wish to shut out the applicant in the event that he feels aggrieved by it. In essence, I am prepared to exercise my discretion and extend time to the applicant to file his notice of appeal.

6. The applicant had filed a notice of appeal on 31 October 2025, which was filed out of time. That notice of appeal is invalid (See **Salat v Independent Electoral and Boundaries Commission & 7 others (Application 16 of 2014) [2014] KESC 12 (KLR) (Civ) (4 July 2014) (Ruling).**

In other words, when you are out of time, you first seek extension of time, and when it is granted, you then proceed to file the document.

7. Having extended time, I now direct the applicant to file a proper notice of appeal **within the next 7 days** and serve it in the usual manner.

8. There will be no orders as to costs.

Orders accordingly.

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

MUNYAO SILA

.....
JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR.