

**IN THE COURT OF
APPEAL AT NAIROBI**
**(CORAM: MURUNGI B. KAIRARIA, J.A. (IN
CHAMBERS)) CIVIL APPLICATION NO. E726 OF 2025**

BETWEEN

GEOFFREY OCHIENG NGALA.....APPLICANT

AND

KENYA KAZI SERVICES LTD.....RESPONDENT

(An application for leave to file a notice of appeal out of time from the judgment and decree of the Employment and Labour Relations Court at Nairobi (Mathews Nduma, J.) dated 13th November 2025

in

ELRC Case No. E664 of 2020

RULING

1. This ruling is on a notice of motion dated 1st December, 2025 by which Geoffrey Ochieng Ngala the applicant, seeks leave of this Court to file a notice of appeal out of time against the decision of the Employment and Labour Relations Court [Mathews Nduma. J.] made on 13th November, 2025 dismissing his claim in Nairobi ELC Case No. E664 of 2020 where he had challenged summary dismissal and sought reliefs for wrong dismissal against Kenya Kazi Services Ltd., the respondent.

2. The applicant was aggrieved by the dismissal of his suit and desired to appeal to the Court of Appeal but cannot proceed to do so because he did not give written notice of his intention to appeal within fourteen [14] days of the decision for which the appeal is lodged as required by **Rule 77[1]** and **[2]** of the Court of Appeal Rules [2022].
3. The filing of a notice of appeal being foundational, the applicant has now moved the Court for extension of time under **Rule 4** of the Court of Appeal Rules which grants power to the Court to extend time limited by the Rules or any decision of the Court or Superior Court for doing anything that is authorized or required by the Rules on such terms as may be just.
4. The application is based on the grounds set out in the body of the notice of motion and supported by two affidavits of the applicant and his counsel sworn on 1st December, 2025. The applicant also relies on written submissions dated 6th February, 2026 and pray the Court to exercise its discretion

in favor of the applicant and grant him leave to file the notice of appeal out of time to enable him file his intended appeal.

5. The applicant's explanation for the delay in filing the notice of appeal as can be discerned from his affidavit and that of his advocate is that they did not get to know the substance of the decision sought to be appealed until 28th November, 2025 when the advocate obtained a copy of the judgement. This was a day late the decision intended to be appealed having been rendered in their absence due to a technical hitch experienced in accessing the virtual Court session on 13th November, 2025. This was the date set for delivery of the judgment. On 15th November, 2025 the applicant found a message on the E- filing Platform that judgment had already been delivered but was not uploaded on the E-filing portal.

6. The application is opposed. In both the replying affidavit sworn by Roselyn Kweyu [the respondent's Head of Human Resource] sworn on 4th February, 2026 and the respondent's written submissions, the respondent assert

that the applicant has been indolent, lacks candor and has not demonstrated

sufficient reason to explain the delay and warrant the exercise of the Court's discretion in his favor. The respondent adds that the applicant has not shown that he has an arguable appeal and a grant of the extension sought will be prejudicial to the respondent who will be subjected to prolonged and unnecessary litigation in a matter that has already been conclusively determined.

7. I have considered the application, the affidavits in support and in opposition thereto as well as the parties' respective written submissions together with the cited case law.
8. The principles upon which a Single judge of this Court exercise jurisdiction to extend time under **Rule 4** of the Court of Appeal Rules are now well settled. They have been succinctly set out in the case of **Leo Sila Mutiso vs. Rose Hellen Wangari Mwangi** - Civil Application No. Nai. 255 of 1997 [cited by the respondent's counsel] and restated in numerous decisions of this Court.
9. The discretion of the Court is unfettered but must

be exercised judiciously guided by
settled principles, not

whimsically or capriciously. The factors to be considered by the Court are not exhaustive but include length of the delay, the reason for the delay, possibly the chances of the intended appeal succeeding and the prejudice that is likely to be occasioned to the respondent.

10. The Court's discretion to allow time is no longer subject to an applicant showing sufficient reason as contended by the respondent in the replying affidavit. [See the dicta of G.S Pall.

J. in Nairobi Civil Application No. Nai. 16 of 1998 **Hon. John Njoroge Michuki and Another vs. Kentazuga Hardware Ltd.** Further a Single judge is not expected to pronounce on

whether or not the intended appeal is arguable or not, that being statutorily within the exclusive province of a three judge bench. The burden is on the applicant to provide plausible and satisfactory explanation for the delay to unlock the flow of the Court's discretion. The grant of extension of time is not a right. It is a discretionary remedy that must be justified. [See the dicta of the Supreme Court

of Kenya in **Salat vs. IEBC & 7 Others** [2014] eKLR.

11. Though the application is strenuously opposed by the respondent, I am persuaded that the justice of the matter tilts towards grant of the extension sought by the applicant for extension of time to file the notice of appeal for the following reasons; First, the duration of the delay is not inordinate taking into account that the application for extension of time was made timeously on 1st December, 2025 barely four or so days from 27th November, 2025 being the 14th day from the date the decision intended to be appealed was made and therefore the date the applicant ought to have filed the notice of appeal. Secondly, the reason given by the applicant and advocate for their failure to join the virtual court session on 13th November, 2025 as well as for the delay in filing the notice of appeal between 15th November, 2025 when the applicant's advocate became aware of the judgment and 27th November, 2025 when the time prescribed by the rules lapsed, is both plausible and satisfactory. It is not unusual for parties and their counsel to experience technical hitches in joining the virtual Session. So long as it

is not routine and

rampart it is something that is to be accommodated once in a while in the course of hearing cases digitally.

12. I am not persuaded that the applicant and his counsel lacked candor in their explanation. The argument by the respondent that the applicant should have filed a notice of appeal even before obtaining a copy of the judgment as a pre-emptive measure, is in my view not well founded considering that the it is common ground that neither the applicant nor his advocate was present in court on 13th November, 2025 and did not know that the suit was dismissed until they obtained a copy of the judgment on 28th November, 2025. A party only files a notice of appeal not merely as a matter of routine but to express intention to appeal against a decision of the court which they are aggrieved with either in whole or in part. The scheme of **Rule 77** does not expect a party to file a notice of appeal blindly in anticipation of an unknown grievance with a decision that is delivered in their absence and which they are not privy to.

13. In the final analysis and for the reasons set out in this ruling, I find that the reason for the delay has been satisfactorily explained and exercise my discretion to extend time in favor of the applicant. Accordingly, the application for extension of time to file the notice of appeal dated 1st December, 2025 is merited and is hereby allowed. The applicant is granted 14 days from the date of this ruling to file and serve notice of appeal. Costs of the application shall abide the outcome of the intended appeal.

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

MURUNGI B. KAIRARIA

.....
JUDGE OF APPEAL

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

Signed.

DEPUTY REGISTRAR