

**IN THE COURT OF  
APPEAL AT  
NAIROBI**

**CORAM: MUNYAO, JA (IN CHAMBERS)**

**CIVIL APPEAL (APPLICATION) NO. E001 OF 2026**

**BETWEEN**

**MICHAEL NJOROGE.....APPELLANT/APPLICANT**

**AND**

**THIKA FARMERS GROUP LTD.....RESPONDENT**

*(An appeal from the judgment and decree of the High of Court at  
Thika (Wanyama, J.) dated 15<sup>th</sup> May 2025*

*in*

***HCCA No. 132 of 2023)***

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**RULING**

1. The application before me is one dated 23 December 2025 said to be brought pursuant to Rules 44 and 49 of the Court of Appeal Rules, 2022. It seeks the following orders (copied verbatim):

***(1) That leave be granted to the appellant to file an appeal against the judgment of the subordinate court (sic) by (Honourable Lady Justice Ouya Tabitha Wanyama) dated 15<sup>th</sup> May 2025 out of time and the annexed Memorandum of Appeal be deemed as filed.***

***(2) That the costs of this application be in the cause.***

2. The application is based on three grounds being:

**(a) The appellant requested for the proceedings and decree immediately after judgment and has been following up on the registry but due to pressure of work and delay in typing the proceedings from the High Court he only got them at the end of November 2025.**

**(b) The appellant had on 15 June 2025 tried to file his Memorandum of Appeal and statement of address of service but the court declined because the record of appeal was not uploaded and could not be uploaded without proceedings and decree.**

**(c) The appellant has an arguable appeal and it is in the interest of justice and fair play that he be granted leave to file an appeal out of time.**

3. The application is supported by the affidavit and supplementary affidavit of the applicant. In his supporting affidavit, sworn on 23 December 2025, he has deposed that Judgment before the High Court was delivered on 15 May 2025; that he requested for proceedings and decree immediately after Judgment; that he got the same at the end of November 2025; and that he had earlier tried to file the Memorandum of Appeal on 13 June 2025 which was declined because the record of appeal had not been uploaded. He urges that he has an arguable appeal and that it will be in

the

interest of justice to be granted leave to file his appeal out of time. He has annexed a letter dated 9 June 2025 requesting for proceedings, the receipt paying for the proceedings, another letter dated 11 September 2025 seeking the decree, and two drafts of Memoranda of Appeals. The supplementary affidavit merely annexes the Notice of Appeal.

4. The respondent has filed Grounds of Opposition, which he later amended, to oppose the motion. It is contended that the application is fatally defective; that the applicant is guilty of inordinate and unexplained delay; that the applicant failed to copy the respondent's advocate with the letters asking for certified copies of proceedings and decree, contrary to Rule 84

(2) of the Court of Appeal Rules, 2022; that the grounds of appeal are based on fact yet this is a second appeal; that there are two sets of Memoranda of Appeal which shows that the applicant is uncertain on the grounds in support of his appeal; and that arguability of an appeal is not a ground for extension of time.

5. It was directed that the application be urged through written

submissions. I only see the submissions of counsel for the

applicant and none from counsel for the respondent. In his submissions, counsel for the applicant referred me to the case of **Leo Sila Mutiso vs Rose Hellen Wangari Mwangi (1999) 2 EA 231** on the principles that a Court considers in an application for extension of time. He also relied on the case of **Anti-Counterfeit Authority vs Francis John Wanyange & 4 Others, Court of Appeal at Nairobi, Civil Application No. 147 of 2019.** He submitted that the delay is not inordinate, and that it was occasioned by the late supply of typed proceedings and the decree, which were only availed at the end of November 2025.

6. I have considered the foregoing before arriving at my decision.
7. What is before me is an application for extension of time to file an appeal out of time. This is covered under **Rule 4** of the **Court of Appeal Rules, 2022** though the applicant did not cite this rule in the body of the application. Instead, the applicant cited **Rule 44** which merely provides for the form of applications to the court and **Rule 49** which refers to the procedure on urgent applications. I will nevertheless consider the application as one under **Rule 4**, but hasten to state that

it

is always good practice to cite the relevant law when making applications to this court, so that it is clear what provision of the law is being relied on. While am on ‘housekeeping issues’ I am rather surprised that the applicant would also refer to a decision of the High Court as a decision of a ‘subordinate court.’ The High Court is certainly not a subordinate court but a superior court as provided for under Article 162 (1) of the Constitution. Those ‘housekeeping issues’ aside, let me now turn to the substance of the application.

8. Being an application for extension of time, the Court has wide discretion, and the principles upon which a Court should consider are not exhaustive. Nevertheless, in the case of **Leo Sila Mutiso vs Hellen Wangari Mwangi** (supra), which counsel for the applicant referred to, the Court laid down some guiding principles which have over time acted as the lodestar for courts when dealing with such applications. In that case, the court pronounced itself as follows:

***“It is now well settled that the decision whether or not to extend the time for appealing is essentially discretionary. It is also well settled that in general the matters which this court takes into account in deciding whether to grant an extension of***

***time are: first, the length***

***of delay; secondly, the reason for delay; thirdly (possibly), the chances of the appeal succeeding if the application is granted; and, fourthly, the degree of prejudice to the respondent if the application is granted.”***

9. Another case that I see often cited is the case of **Fakir Mohamed v Joseph Mugambi & 2 others [2005] KECA 340 (KLR)**, where Waki, JA stated 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.”***

10. So, from the above, we can see that among the common issues that the Court looks at is:

- (i) Length of the delay;**
- (ii) Reason for the delay;**

**(iii) Chances of the appeal succeeding;**  
**(iv) Prejudice to the other party.**

11. I will have these principles in mind while dealing with the application herein.

12. The Judgment sought to be appealed against is said to have been delivered on 15 May 2025. I am using the words 'said to have been delivered' deliberately because I have not seen the judgment as the applicant did not attach it to his application. I indeed wonder why the applicant did not attach the judgment because that judgment would not only demonstrate the date of its delivery, but also reveal what it is that is being appealed against, and that would have an impact on whether or not the court should exercise its discretion in favour of the applicant.

13. Assuming that he is correct that the judgment was delivered on 15 May 2025, the first thing that I observe is that the applicant was out of time in filing his Notice of Appeal.

Rule

77 (2) of the Court of Appeal Rules, 2022, prescribes that a Notice of Appeal be filed within 14 days of the decision. In our case, the Notice of Appeal was filed on 5 June 2025 which

was

21 days after the decision. That was late and the delay in filing

that notice of appeal is not mentioned at all within this application. I would have thought that the applicant would acknowledge that first misstep and give an explanation for it. Certainly, I do not have before me any prayer to extend time in favour of that late notice of appeal.

14. Moving on, the reason for the delay is said to be because proceedings were not obtained in time. We need to recall that the Memorandum of Appeal and the record of appeal need to be filed within 60 days of filing of the notice of appeal as prescribed in Rule 84 (1) of the Court of Appeal Rules, 2022. I wish to refer a little bit more to this Rule 84 so I will copy it in full. It provides as follows:

***84. Institution of appeals***

***(1) Subject to rule 118, an appeal shall be instituted by lodging in the appropriate registry, within sixty days after the date when the notice of appeal was lodged—***

***(a) a memorandum of appeal, in four copies;***

***(b) the record of appeal, in four copies;***

***(c) the prescribed fee; and***

***(d) security for the costs of the appeal:***

***Provided that where an application for a copy of the proceedings in the superior***

***court has***

***been made in accordance with sub-rule (2) within thirty days after the date of the decision against which it is desired to appeal, there shall, in computing the time within which the appeal is to be instituted, be excluded such time as may be certified by the registrar of the superior court as having been required for the preparation and delivery to the appellant of such copy.***

***(2) An appellant shall not be entitled to rely on the proviso to sub-rule (1) unless the appellant's application for such copy was in writing and a copy of the application was served upon the respondent.***

***(3) The period specified in sub-rule (1) for the institution of appeals shall apply to appeals from superior courts in the exercise of their bankruptcy jurisdiction.***

15. We have already seen that an appeal is to be lodged within 60 days of filing of the notice of appeal. In our case, we know that the notice of appeal was lodged on 5 June 2025. The applicant therefore had 60 days from this date i.e 3 August 2025 to file his appeal. He could however benefit from an extension of time by operation of law if he fell within the proviso, which is to effect that the time taken for supply of proceedings will be discounted, if there is an application made for the proceedings within 30 days of the decision, and such

application for the proceedings is in writing and served upon the respondent.

16. In our case, the applicant has annexed a letter dated 9 June 2025 requesting for proceedings. The letter is within 30 days of the decision. However, that letter is not copied to the respondent. It certainly does not indicate that it is copied to anybody and there is no indication of it having been served upon the respondent. In the grounds of opposition, the respondent did state that the said letter was not copied to her. It follows that the applicant could not therefore derive benefit from the proviso. If he had copied the letter, and the proceedings were supplied in November 2025 as he claims, then he could very well have been within time in filing his appeal at the time that this application was made, which is 23 December 2025.

17. Now, the applicant has not given any reason why he did not copy this letter to counsel for the respondent. Neither has he given any precise date of when he obtained the proceedings, merely stating that they were obtained 'late November.' I would have thought that the date when the

proceedings were actually

received is a critical date to supply to the court in an application such as this, so that the court can assess the length of time, which is a consideration, but none has been given.

18. Glaringly, as I pointed out earlier, the applicant has not supplied the court with a copy of the judgment that he intends to challenge. Without the copy of judgment being provided, I am unable to tell whether the appeal is one which is arguable or frivolous. Indeed, there are some judgments which may be final before the High Court, or some judgments that will require leave before coming to the Court of Appeal. Those are issues that the Court of Appeal must be alive to. Without the judgment, I am also handicapped in determining the extent of prejudice to the applicant by not allowing the application, or the extent of detriment that may be subjected to the respondent by allowing the application. It was critical that the judgment be supplied.

19. I think the direction that I am taking is pretty much clear. With all these stark omissions that I have pointed out, I do not

see how this court can exercise its discretion in favour of the applicant.

20. I find no merit in this application and it is hereby dismissed with costs.

21. Orders accordingly.

**Dated and delivered at Nairobi this 13<sup>th</sup> day of March 2026.**

**MUNYAO SILA**

.....  
**JUDGE OF APPEAL**

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

***Signed***

**DEPUTY REGISTRAR.**