



Osongo & another v Board of Management Pumwani Boys Secondary School (Civil Application E643 of 2025) [2026] KECA 521 (KLR) (13 March 2026) (Ruling)

Neutral citation: [2026] KECA 521 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPLICATION E643 OF 2025
AI HASSAN, JA
MARCH 13, 2026**

BETWEEN

JAMES OSONGO 1ST APPLICANT

STEPHEN WAMBANDA OSONGO 2ND APPLICANT

AND

**BOARD OF MANAGEMENT PUMWANI BOYS SECONDARY
SCHOOL RESPONDENT**

(An application seeking extension of time to file an appeal out of time from the judgment of the High Court of Kenya at Nairobi (Mwamuye, J.) dated 12th September, 2025 in HCC.HR. Petition No. E387/2023)

RULING

1. By a Notice of Motion dated 6th November 2025, the applicants seek an extension of time under Rule 4 of this Court to file an appeal against the judgment of the High Court at Nairobi (Mwamuye, J.) dated 12th September 2025 in HCCHRPET/E387/2023.
2. The application is supported by the grounds set out in its body and a supporting affidavit sworn by the 2nd applicant on 11th November, 2025. The application is opposed by the respondent by way of a replying affidavit sworn by one John Ngururi, a principal at the respondent school, on 10th December, 2025. The application was canvassed by way of written submissions. The applicants' submissions are dated 19th January, 2026, while those of the respondent are dated 11th December, 2025.
3. The applicants' averments and submissions are that the impugned judgment was initially scheduled to be delivered on 12th September, 2025, at 12.00 P.M. However, the said judgment was delivered on the morning of 12th September, 2025, without notice and in the absence of the applicants' counsel. That the said judgment was uploaded on the judiciary e-filing platform on 24th September, 2025, by which time the statutory 14-day period for filing a notice of appeal had lapsed.



4. The applicants argue that the delay in filing the notice of appeal is not inordinate and was occasioned particularly by the premature delivery of the judgment and the late posting of the judgment on the e-filing platform.
5. It is contended that the intended appeal raises arguable points of law and fact. A draft memorandum of appeal has been annexed to the affidavit in support of the application. A further averment is that no prejudice will befall the respondent if the application is allowed.
6. The respondent, on its part, argues that the applicants are indolent. That the applicant's advocate did not attend court on both the 10th and 12th of September, 2025, when the impugned judgment was scheduled to be delivered. That the mistake and indolence of advocates and litigants should not be rectified by this honorable court. The respondent further contends that the delay of approximately three months is inordinate and inadequately explained. On whether the intended appeal is arguable, the respondent avers that the applicants have not demonstrated that they have an appeal with chances of success. Finally, the respondents aver that no prejudice will be occasioned to the applicants should the application be disallowed since the 1st applicant has since finished school and received his final results together with a leaving certificate from the respondent school.
7. Consequently, the respondent urges this court to find that the motion is unmeritorious and to dismiss the same with costs to it.
8. I have carefully considered the application, the grounds in support thereof, the submissions, and the law. The principles upon which this Court exercises its discretion pursuant to Rule 4 to extend time or not have now taken a well-beaten path. The Court has wide and unfettered discretion in deciding whether to extend time or not. However, in exercising its discretion, the court should do so judiciously. See *Mwangi v Kenya Airways Limited* (2003) KLR 486, where this Court stated thus:

“Over the years, the Court has set out guidelines on what a single judge should consider when dealing with an application for extension of time under Rule 4 of the Rules. For instance, in the case of *Leo Sila Mutiso v Rose Hellen Wangari Mwangi* [1999], which is the locus classicus, the parameters were laid down 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 that this Court takes into account in deciding whether to grant an extension of time are first, the length of the delay; secondly, the reason for the 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.” [Emphasis supplied.]
9. As regards the length of delay, in *Andrew Kiplagat Chemaringo v Paul Kipkorir Kibet* [2018] eKLR this Court stated that there is no maximum or minimum period of delay set out under the law. However, the reason or reasons for the delay must be reasonable and plausible. “The law does not set out any minimum or maximum period of delay. All it states is that any delay should be satisfactorily explained. A plausible and satisfactory explanation for delay is the key that unlocks the court’s flow of discretionary favor. There have to be valid and clear reasons upon which discretion can be favorably exercised.”
10. In the instant case and as regards the length of the delay, it is indeed not in dispute that the impugned judgment was delivered on 12th September, 2025, whereas the instant motion is dated 6th November, 2025. There has therefore been a delay of about 3 months.



11. Turning to the reason(s) advanced for the delay, the applicants assert that the delay was due to the fact that judgment was scheduled to be delivered on 12th September, 2025, at 12.00 noon but was instead delivered on the said date in the morning without notice and in the absence of the applicants' counsel. That there was also a delay in uploading the judgment on the e- filing platform since it was not until 24th September, 2025, that the judgment was uploaded. That the applicants' advocates became aware of the delivery of the judgment upon it being uploaded on the e-filing platform.
12. I have considered the explanation tendered for the delay, and I am satisfied that it is both reasonable and plausible. In the first instance, although the judgment was scheduled for delivery at 12:00 noon, it was in fact delivered earlier in the morning. In those circumstances, it is conceivable that counsel for the applicants was not aware that the judgment had already been pronounced. Secondly, it is now the practice that communication to parties is effected primarily through the e-filing platform. If the judgment was uploaded on 24th September 2025, it is understandable that counsel only became aware of it on that or a later date.
13. Ultimately, therefore, I am of the considered opinion that the delay herein has been sufficiently explained to the satisfaction of this court.
14. As to the arguability or otherwise of the intended appeal, it would not be in my place to determine the same sitting as a single judge, and I will therefore not delve further into this issue, suffice to state that the intended is not frivolous and merits to be heard.
15. Finally, on the issue of prejudice, the respondent has not demonstrated any prejudice that it would suffer if the motion were to be allowed. Its averment, rather, is that the applicants would not suffer prejudice, noting that the 1st applicant has already completed school and has since been issued with his leaving certificate. In my view, such circumstances do not amount to prejudice on the part of the respondent.
16. The totality of my findings, therefore, is that the applicants have demonstrated and satisfied the existence of the principles for consideration in the exercise of my unfettered discretion pursuant to Rule 4 of this Court to extend the time within which to file the intended appeal.
17. In the circumstances, I am satisfied that the applicants have sufficiently met the threshold for extension of time under Rule 4. Accordingly, the motion dated 6th November 2025 is allowed as prayed. The applicants shall proceed to file the intended appeal within a period of 30 days from the date of this ruling, failure to do which means these orders shall stand vacated.
18. The costs of this motion shall abide the outcome of the intended appeal.

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

AHMED ISSACK

.....

JUDGE OF APPEAL

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

Signed.

DEPUTY REGISTRAR

