



**Kemboi v University of Eldoret (Civil Appeal (Application)  
37 of 2020) [2026] KECA 746 (KLR) (23 April 2026) (Ruling)**

Neutral citation: [2026] KECA 746 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAKURU  
CIVIL APPEAL (APPLICATION) 37 OF 2020  
JM MATIVO, JA  
APRIL 23, 2026**

**BETWEEN**

**NATHAN KIPRUTO KEMBOI ..... APPLICANT**

**AND**

**UNIVERSITY OF ELDORET ..... RESPONDENT**

*(Being an application for extension of time to lodge and serve a reference out  
time from a ruling of this Court (Mativo, JA) dated 15th December 2025)*

**RULING**

1. By an application dated 13<sup>th</sup> July 2020, Nathan Kipruto Kemboi (the applicant) moved this Court seeking two substantive reliefs namely: (a) leave to lodge his memorandum and record of appeal out of time in the Court of Appeal from the judgment and decree of Hon. Justice M. Mbaru of the 21<sup>st</sup> November 2019; (b) the memorandum and record of appeal filed herewith be deemed as properly on record.
2. The said application was listed before me as a single Judge on 15<sup>th</sup> December 2025 for hearing by way of submissions without appearance by counsel. Directions to that effect were issued to the parties on 2<sup>nd</sup> December 2025 at 14.00 PM by the Deputy Registrar of this Court who also e-mailed hearing notices to the parties reminding them to comply with the said directions on the requirement to file submissions.
3. The application was listed for hearing before me on 15<sup>th</sup> December 2025. However, I noted that the applicant had not filed submissions. Accordingly, I dismissed the application under Rule 58 of the Court of Appeal Rules, 2022 which stipulates as follows:

“ 1. If, on any day fixed for the hearing of an application, the applicant does not appear or comply with directions, the application may be dismissed unless the



Court sees fit to adjourn the hearing: Provided that the Court may order that an application may be heard by way of written submissions and where parties have filed written submissions, the Court shall consider the submissions.”

4. The applicant has now approached this Court by an application dated 31<sup>st</sup> March 2026 seeking orders that: (a) this Court be pleased to review/rescind the ruling dated and delivered on 15<sup>th</sup> December 2025; (b) this honourable Court be pleased to review/vacate/set aside the ruling dated and delivered on 15<sup>th</sup> December 2025 and the resultant orders; (c) the application dated 13<sup>th</sup> July 2020 be reinstated for hearing on merits; (d) the costs of this application abide the outcome of the appeal; (d) any other orders that this Court may deem fit to grant. The application is anchored on the provisions of Articles 10 (2) (a), 22 (1), 25(c), 50(1) and 159 (2) (d) (e) of *the Constitution*, Sections 3A and 3B of the *Appellate Jurisdiction Act* and Rules 47, 57 (1) (b) & 159 (1) & (2) of the Court of Appeal Rules.
5. The key ground in support of the application is that it is in the interests of justice that this Court sets aside its orders issued on 15<sup>th</sup> December 2025 and reinstate the application dated 13<sup>th</sup> July 2020 for hearing and determination on merit.
6. The respondent filed undated grounds of opposition urging that:
  - a. there is no provision under the *Appellate Jurisdiction Act* or the Rules conferring jurisdiction to a single Judge to review his decision; (b) Rule 57 (1) (b) only provides for a reference; (c) Sections 3A and 3B do not confer jurisdiction to a single judge to vacate his orders; (d) Rule 58 (1) provides for dismissal where submissions are not filed and the ensuing order is final. There is no provision for reinstatement under the said rule; (e) a dismissal under Rule 58 (1) is not amenable to a reference, hence, the remedy lies in an appeal and relied on Parliamentary Service Commission v Wambora & 36 Others [2018] KESC 74 (KLR) and National Bank of Kenya v Ndungu Njau (Civil Appeal No. 211 of 1996) to urge that this Court is clothed with jurisdiction to review its decision maintaining that the applicant was condemned unheard.
7. In opposition to the application, the respondent’s counsel filed submissions dated 13<sup>th</sup> April 2026 asserting that the application is fundamentally flawed, and that this Court lacks jurisdiction to grant the reliefs sought. Citing the Supreme Court decision in Telkom Kenya Limited v John O. Ochanda [2014] eKLR, counsel maintained that a court cannot review its own decision. Counsel reiterated that this Court lacks jurisdiction to review its orders. Responding to the propriety of the applicant’s invocation of Articles 10 (2) (a), 25 (1), 25 (c), 50 (1) and 159 (2) (d) (e) of *the Constitution*, the respondent’s counsel argued that the said provisions cannot confer jurisdiction to this Court where the statute has withheld it.
8. Further, the respondent’s counsel maintained that a dismissal under Rule 58 (1) is final discretionary order and the only way out is a reference under Rule 57 (1) (b) and cited Civil Application No. 118 of 1999 (notably an in complete citation which adds no value) in support of the said position. Also, counsel at length cited the proceedings before the full bench and maintained that the applicant was advised by the full bench of this Court to approach the Court by way of review since he had not attacked the exercise of the single Judge’s discretion under Rule 4. Counsel also took issue with the remedies sought in this application and argued that the overriding objective invoked by the applicant is not a panacea for all procedural ills. Counsel maintained that the applicant has admitted several flaws in his affidavit and stressed that mistakes by counsel cannot be allowed to derail justice. Lastly, counsel urged this Court to award costs of this application to the respondent.



9. Central to this determination is Rule 58 of the Court of Appeal Rules, 2022, which both parties gave a wide berth in their arguments. The said provision provides as follows:

“ 58. Procedure on non- appearance

1. If, on any day fixed for the hearing of an application, the applicant does not appear or comply with directions, the application may be dismissed, unless the Court sees fit to adjourn the hearing:  
  
Provided that the Court may order that an application may be heard by way of written submissions and where parties have filed written submissions, the court shall consider the submissions.
2. If the applicant appears or complies and the respondent fails to appear or comply, the application shall proceed in the absence of the respondent, unless the Court sees fit to adjourn the hearing.
3. Where an application has been dismissed or allowed under sub-rule (2), the party in whose absence the application was determined may apply to the Court to restore the application for hearing or to re- hear it, as the case may be, if that party can show that he or she was prevented by any sufficient cause from appearing when the application was called on for hearing.
4. An application made under sub-rule (3) shall be made within thirty days of the decision of the Court, or in the case of a party who would have been served with notice of the hearing but was not so served, within thirty days after that party’s first hearing of that decision.
5. The provisions of sub-rule (1) shall not apply to a criminal application if the applicant is in prison and is not represented by an advocate and in any such case, the application shall be heard notwithstanding the absence of the applicant, unless the Court shall otherwise order.
6. Subject to the provisions of sub-rules (1), (2), (3), (4), and (5), the Court shall have discretion to dismiss an application or an appeal where one or both parties fail to appear or comply after being duly served, or cannot be traced at the parties’ last known address.
7. A party’s advocate may effect service under this rule.”

10. Clearly, a reading of Rule 55 leaves no doubt that an application for reinstatement or setting aside an order issued by a single Judge falls within the jurisdiction of a single Judge. Therefore, under Rule 58 (3) of the Court of Appeal Rules, 2022, a single Judge of this Court has the discretionary power to reinstate a single Judge application that was dismissed under Rule 58 (1) for non-attendance or failure to comply with directions. However, this power is conditional upon the applicant demonstrating sufficient cause for their failure to appear or comply with courts directions and adhering to strict timelines fixed by the rules.

11. Under Rule 58 (4), the application for reinstatement must be filed within 30 days of the dismissal decision. If a party was not served with the hearing notice, the 30-day window begins from the date



they first hearing of the dismissal. Failure to act within this window, or showing "lethargy" in pursuing the matter will likely result in the dismissal of the reinstatement motion.

12. In litigation, procedural timelines are not mere "technicalities" but essential safeguards that ensure the justice system remains fair, efficient and predictable. While courts often view procedure as a tool to facilitate justice rather than obstruct it, they increasingly emphasize that timelines must be strictly observed to maintain institutional order and protect the rights of all parties.
13. The application before me is dated 31<sup>st</sup> March 2026. The order sought to be reviewed/set aside is dated 15<sup>th</sup> December 2025. Clearly, this application was filed outside the 30 days period provided under the above provision. The applicant was obligated by the law to seek and obtain extension of time under Rule 4 of this Court's Rules to file the application the subject of this ruling. He did not do so. The import of this omission is that the said application is not properly before this Court. It is a candidate for striking out, which I hereby do. I make no orders as to costs.

**DATED AND DELIVERED AT NAKURU THIS 23<sup>RD</sup> DAY OF APRIL 2026.**

**J. MATIVO**

**JUDGE OF APPEAL**

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

Signed.

**DEPUTY REGISTRAR**

