



REPUBLIC OF KENYA



KENYA LAW
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Ngonjoh v Board of Management, Shakaina Presbyterian School & 3 others (Civil Application E364 of 2024) [2025] KECA 582 (KLR) (28 March 2025) (Ruling)

Neutral citation: [2025] KECA 582 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPLICATION E364 OF 2024
PO KIAGE, JA
MARCH 28, 2025**

BETWEEN

SAMUEL NGUGI NGONJOH APPLICANT

AND

**BOARD OF MANAGEMENT, SHAKAINA PRESBYTERIAN
SCHOOL 1ST RESPONDENT
MR. GEDION MWANGI WOKABI 2ND RESPONDENT
MS JUDY NDUATA THUO 3RD RESPONDENT
MR SAMUEL NDUNGO KARIUKI 4TH RESPONDENT**

(An Application for leave to file and serve a notice of appeal out of time from the ruling of the High Court at Kiambu (Dorah Chepkwony, J.) dated 12th April 2024 in HCCC No. E012 of 2022)

RULING

1. By a motion dated 7th June 2024, the applicant Samuel Ngugi Ngonjoh makes the following prayers;
2. That the applicant be granted extension of time to file and serve the notice of appeal out of time in an intended appeal against the ruling issued on 12th April 2024 in High Court of Kenya at Kiambu (Lady Justice Dorah Chepkwony), against the High Court Civil Case NO. HCCC-E012 of 2022);
3. That the notice of appeal filed on 6th June 2021 and served to the defendants on 7th June 2024 be deemed as duly filed and served.



2. On the face of the motion are some 26 ‘grounds’ named a to z, on which it is said to be premised although they read more like a narration of what is also contained in his supporting affidavit sworn on the same date.
3. What can be gleaned from the two documents is that the impugned ruling was first scheduled for delivery on 7th December 2023, but was not. It was adjourned to be delivered on notice, but no such notice issued to him. He checked on the judiciary portal and made several follow up visits to the registry of the court below, but got no information. He later learnt that the ruling was uploaded on 3rd June 2024 and bore a delivery date of 12th April 2024, but without notice to the parties. On learning of the ruling, which upheld the defendant’s preliminary objection and struck out his suit, he immediately lodged a notice of appeal dated 5th June 2024 and then filed this application 2 days later.
4. It is the applicant’s contention that he was at all times vigilant throughout the proceedings at the High Court and he should be allowed to exercise his right of appeal against the impugned ruling since the delay in filing the notice of appeal was not of his own making.
5. I have not seen any replying affidavit in opposition to the motion. Still, I am under a duty to consider the same on its own merit in exercise of my unfettered discretion, the end of which should be the doing of substantive justice to the parties. Having done so, I am easily persuaded from the record that the applicant was all along diligent and made all efforts to follow up on the ruling from the time it was not delivered on the scheduled date. I accept as factual his assertion that he was never notified of the eventual delivery date, and that the moment he learnt from the uploaded ruling that it had been delivered on 12th April 2024, he moved with speed to file a notice of appeal. The delay between April and June is clearly because he was not notified, and was thus unaware of delivery. The delay is, therefore, fully and satisfactory explained.
6. A full consideration of the record, including the applicant’s industry in pursuing the status of the ruling and moving with alacrity upon hearing of its delivery *sans* notice, reveals a litigant who acted conscientiously and with industry. I, therefore, find his application for extension of time to validate the notice of appeal to be well-merited. Our rule 4 allows an application to be made for extension of time even after the notice of appeal has been filed, albeit out of time. In fact, litigants do well to move with speed and do the belated thing even before the filing of the application for enlargement of time, as such filing does lessen the length of delay and probably dilute the sting of prejudice that the respondents might raise.
7. The upshot is that the motion is granted. The notice of appeal dated June 6, 2024 and served on the respondents on June 7, 2024 be and is hereby deemed to be duly filed and served.
8. The costs shall abide the outcome of the appeal.

Order accordingly.

DATED AND DELIVERED AT NAIROBI THIS 28TH DAY OF MARCH, 2025.

P. O. KIAGE

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JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR

