



REPUBLIC OF KENYA



**KENYA LAW**  
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**Onyango v Ambe (Civil Application E359 of 2024)  
[2025] KECA 587 (KLR) (28 March 2025) (Ruling)**

Neutral citation: [2025] KECA 587 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAIROBI  
CIVIL APPLICATION E359 OF 2024  
PO KIAGE, JA  
MARCH 28, 2025**

**BETWEEN**

**CYLLUS GODFREY ONYANGO ..... APPLICANT**

**AND**

**DR SELINA VUKINU AMBE ..... RESPONDENT**

*(An Application for extension of time to file and serve a notice of appeal out of time from the Judgment and Decree of the High Court at Nairobi (Ongeri, J.) dated 24th May 2024 in HCCC No. 174 of 2018)*

**RULING**

1. A party who seeks extension of time under Rule 4 of the Court of Appeal Rules is obligated to place before a single Judge of this Court some material on the basis which discretion may be exercised favourably. Such discretion is free and unfettered but cannot be based on mere whim, caprice or personal inclination. The judge considers a number of matters foremost of which are the length of delay; the reasons or explanation for the delay; (possibly) the likelihood of the appeal succeeding and the likelihood of prejudice to be suffered by the respondent as a consequence of such extension. See the Supreme Court's decision in [NICHOLAS KIPTOO ARAP SALAT Vs. IEBC & 7 OTHERS](#) [2015] eKLR.
2. I am not satisfied that the applicant Cyllus Godfrey Onyango has done so on his motion dated 11<sup>th</sup> July 2024 and his affidavit in support thereof sworn on the same day. He seeks an extension to file a notice of appeal against the judgment of the High Court (A. Ongeri, J.) dated 24<sup>th</sup> May 2024. All I see him to say is the averment at paragraphs 3 and 4 of the said affidavit, oddly in second-person, that "the applicant



being desirous of appealing against the whole judgment instructed its (sic) Advocates on record to file a notice of appeal and request for certified typed proceedings [but] unfortunately the Advocates

....inadvertently failed to pay for the drafted notice of appeal.” No such draft is annexed.

3. That averment is clearly hearsay or at best an opinion or mere surmise on the part of the applicant. He does not disclose whether it is his opinion that there was some error or inadvertence, nor does he disclose if this was a statement based on information and, if so, from whom. The affidavit does not contain matter he can personally prove. Had the advocate sworn such affidavit and explained his mistake, the applicant it might have fared better, though I am dubious about that, as well. This is because a notice of appeal is the simplest of all documents to draft and file. In fact, our rules have a sample attached in the schedules. There is no magic to it.
4. I think, with respect, it is not enough for a party to say “Oh, my lawyers forgot to pay for and or file the notice of appeal.” In this case there is a delay of over a month from the expiry of the time prescribed by the rules for the lodging of a notice of appeal. The delay is on the face of it long and unexplained and I find unanswerable the opposition by the respondent Dr. Selina Vukinu Ambe in her affidavit sworn on 23<sup>rd</sup> July 2024.
5. Being of that mind, I find this motion to be unmeritorious and dismiss it with costs.

Order accordingly.

**DATED AND DELIVERED AT NAIROBI THIS 28<sup>TH</sup> DAY OF MARCH, 2025.**

**P. O. KIAGE**

.....

**JUDGE OF APPEAL**

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

Signed

**DEPUTY REGISTRAR**

