



REPUBLIC OF KENYA



**Green Pastures Farm v Ngweso (Civil Application E143 of 2024)  
[2025] KECA 720 (KLR) (25 April 2025) (Ruling)**

Neutral citation: [2025] KECA 720 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT KISUMU  
CIVIL APPLICATION E143 OF 2024  
HA OMONDI, JA  
APRIL 25, 2025**

**BETWEEN**

**GREEN PASTURES FARM ..... APPLICANT**

**AND**

**JOASH AMBOGO NGWESO ..... RESPONDENT**

*(Being an application for extension of time to file and serve a notice of appeal and a record of appeal out of time from the Judgment of the Employment and Labour Relations Court at Bungoma (J. W. Keli, J.) dated 26th June 2024 in Cause No. 011 of 2023)*

**RULING**

1. The applicant is aggrieved by the decision made in Bungoma Employment and Labour Relations Court (ELRC) No 011 of 2023 by Keli, J, on 26<sup>th</sup> June 2024; and by a Notice of Motion dated 4<sup>th</sup> October 2024, seeks to be allowed to file and serve a Notice of Appeal and Record of Appeal out of time; that the Notice of Appeal filed and served on the 15<sup>th</sup> July 2024, be deemed as duly filed and the appellant be granted leave to file a record of appeal within such timelines as may be permitted by this Court.
2. The application is supported by the affidavit of sworn by the applicant's advocate, Charles B.G. Ouma in which he explains that he only became aware of delivery of the judgment on 8<sup>th</sup> July 2024; and upon the applicant expressing a desire to appeal; he immediately prepared a Notice of appeal and a letter bespeaking the proceedings. He then filed and served the Notice of Appeal on 15<sup>th</sup> July 2024 – this was due to a short delay in being mapped to the portal; he has annexed a copy of the email forwarding the Notice to the respondent's advocate.
3. However, apparently, he did not file and serve the letter bespeaking the proceedings, which would have offered him refuge in computing the days within which the appeal ought to have been filed. Counsel only got to realise the omission on 2<sup>nd</sup> October 2024, when he got to learn that the letter was not



uploaded. He explains that the delay in filing the record of appeal was due to the fact that he was waiting for typed proceedings from the ELRC, which only became available on 22<sup>nd</sup> October 2024.

4. In the interim, between June 2024 to September 2024, counsel experienced an odd assortment of neurological health challenges which affected his professional work, as demonstrated by various medical records that he has annexed. He was eventually unable to use his hand, and had to adopt use of a new type of technology known as “Voice Text” - which was unfamiliar to him and engage the aid of an assistant. When he eventually got copies of the proceedings in October 2024. These are the events which have necessitated this application.
5. In opposing the application, the respondent through a replying affidavit sworn by Joash Ambogo Ngweso contends that the application is simply a delaying tactic, intended to hinder him from enjoying the fruits of the judgment.
6. According to the respondent, if the applicant considered the situation a serious matter, the court ought to have been moved under certificate of urgency; and coming as a routine application takes away the applicant’s bona fides; that the applicant has never been interested in the matter as she never appeared in court at the trial or at the hearing of the first appeal; and the issue of counsel’s illness is described as an afterthought intended to evoke sympathy from the court. The respondent urges for the dismissal of the application.
7. This Court has unfettered discretion under Rule 4 of the Court of Appeal Rules to extend time for any step intended to be done within the period stipulated by the Rules in Paul Wanjohi Mathane vs. Duncan Gichare Mathenge [2013] eKLR this Court held thus:

“The discretion under Rule 4 is unfettered, but it has to be exercised judiciously, not on whim, sympathy or caprice. I take note that in exercising my discretion I ought to be guided by consideration of the factors stated in previous decisions of this Court including, but not limited to, the period of delay, the reasons for the delay, the degree of prejudice to the respondent and interested parties if the application is granted, and whether the matter raises issues of public importance.”

8. In the present application, the applicant has given the reason for the delay in lodging the appeal in time as being an inadvertent omission by counsel, who unfortunately due to an ailment that set in almost immediately after preparing the documents necessary to pursue the appeal. As fate would have it, labouring under the false impression that he had filed and served all the necessary documents, he did not realise the omission until time had long lapsed.
9. I have carefully considered both arguments, and it is my considered view that the situation the applicant finds itself in was as a result of human error, compounded by the health issues that set it and militated against learned counsel being diligent. I am hesitant to conclude that the scenario given is intended to prod at the court’s emotions; in my view counsel has shared his plight in the spirit of transparency and lived reality that befell him. I find that the applicant is deserving of this court’s exercise of discretion.
10. The upshot is that the application be and is hereby allowed.

The applicant is granted extension of time to lodge and serve the notice and record of appeal. The same shall be filed and served within fourteen (14) days of today’s date. There shall be no orders as to costs.

**DATED AND DELIVERED AT KISUMU THIS 25<sup>TH</sup> DAY OF APRIL, 2025.**

**H. A. OMONDI**

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**JUDGE OF APPEAL**

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

Signed

**DEPUTY REGISTRAR**

