



**Wanyoike v Njuguna & 2 others (Civil Application
E026 of 2025) [2025] KECA 637 (KLR) (4 April 2025) (Ruling)**

Neutral citation: [2025] KECA 637 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT KISUMU
CIVIL APPLICATION E026 OF 2025
LK KIMARU, JA
APRIL 4, 2025**

BETWEEN

SAMUEL WANYOIKE APPLICANT

AND

DAVID MWENJA NJUGUNA 1ST RESPONDENT

DELIGHT MOTORS LIMITED 2ND RESPONDENT

NJORO OPERATIONS SACCO 3RD RESPONDENT

(Being an Application for leave to file appeal out of time from the judgment of the High court of Kenya at Kisumu (M.S. Shariff, J) Dated 31st May, 2024 in HC Civil Appeal No. E112 of 2022)

RULING

1. Samuel Wanyoike, the applicant was aggrieved by the judgment of the High Court sitting at Kisumu which was rendered on 31st May, 2024 (M.S. Shariff, J). The applicant states that he was not aware that the judgment was delivered on the day it was delivered. This was due to the fact that the court had indicated that it would deliver the judgment on notice. Once he became aware of it, he decided to appeal to this Court against the same. However, by the time, the period by which he was supposed to lodge the notice of appeal had expired.
2. It is for that reason that the applicant moved this Court pursuant to Rule 4 of the Court of Appeal Rules, 2022 seeking, inter alia, to be granted leave to lodge appeal out of time. The applicant states that his intended appeal raises issues which on consideration by this Court, is likely to succeed. He urged the Court to allow the application in the interests of justice.
3. The respondents were served with the hearing notice by the Court. They did not file a response to the application. Neither did they file written submissions in opposition to the application. The application is therefore unopposed.



4. Rule 4 of the Court of Appeal Rules, 2022 grants this Court unfettered discretion to extend time for any steps to be done beyond the period stipulated by the Rules. In the present application, the applicant explained that he was unable to file the notice of appeal in time because he was unaware that the judgment, which was to be delivered on notice, had been delivered. Once he became aware of the same, he filed the present application.
5. This Court is persuaded that the applicant is deserving of the exercise of discretion by this Court. It is evident that the applicant is desirous of pursuing his appeal before this Court. In the interest of justice, he should be given a chance to ventilate his appeal before the Court. The delay has been explained to the satisfaction of this Court. He acted timeously once he became aware of the judgment. He was diligent and not indolent.
6. In the premises therefor, the application has merit. It is hereby allowed. The applicant is granted leave to appeal out of time. The notice of appeal 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 4TH DAY OF APRIL, 2025.

L. KIMARU

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JUDGE OF APPEAL

I certify that this is a true copy of original.

Signed

DEPUTY REGISTRAR.

