



**Hussein v Kenya School of Law; Council of Legal Education (Interested Party)
(Civil Application E675 of 2024) [2025] KECA 734 (KLR) (2 May 2025) (Ruling)**

Neutral citation: [2025] KECA 734 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPLICATION E675 OF 2024**

M NGUGI, JA

MAY 2, 2025

BETWEEN

ISSA MOHAMED HUSSEIN APPLICANT

AND

KENYA SCHOOL OF LAW RESPONDENT

AND

COUNCIL OF LEGAL EDUCATION INTERESTED PARTY

(Being an application for extension of time to file a memorandum of appeal and record of appeal from the judgment of the High Court at Nairobi (K. Magare J.) dated 30th July 2024 in High Court Civil Appeal Number 218 of 2023)

RULING

1. In his application dated 27th November 2024, the applicant, Issa Mohammed Hussein, asks this Court to extend time for him to file his memorandum and record of appeal against the judgment of Magare J. dated 30th July 2024. The application is brought under rule 1(2), 4, 43 and 44(1) of this Court's Rules, 2022 and Article 159(2) of *the Constitution* of Kenya. It is based on the grounds on its face and the affidavit in support sworn by the applicant on 27th November 2024.
2. The applicant avers that judgment in the appeal that he seeks to appeal from was delivered on 30th July, 2024, allowing the appeal by the respondent in which it had sought to set aside the judgment of the Legal Education Appeals Tribunal dated 17th March 2023, thereby shattering his hope of attending the Advocates Training Program (ATP), offered by the respondent.
3. The applicant avers that following the judgment, he instructed his former advocates to file an appeal, and a notice of appeal was filed on 6th August 2024. He was, however, unable to raise the required legal fees sought by his former advocates to lodge the appeal. He states that he entered into an agreement



- with his former advocates to have the necessary documents lodged, as they worked out an agreement to offset the legal fees, but his former advocates thereafter became evasive.
4. The applicant avers that he later discovered that his former advocate had not filed the memorandum of appeal and record of appeal within the statutory 60 days, that is by 5th October, 2024. The applicant therefore instructed his counsel now on record to act on his behalf, and they expeditiously filed the present application. He avers that unless the orders he seeks are granted, he stands to suffer irreparable harm and unjust limitation to his right to education as enshrined in Article 43(1)(f) of the Constitution.
 5. The respondent filed grounds of opposition dated 31st January 2025 in which it contends that the subject matter of the appeal was conclusively determined by this Court in Civil Appeal No. E472 of 2021 Kenya School of Law v. Richard Otene Okomo and 42 others, and therefore the chance of the intended appeal succeeding, if the application is allowed, are virtually none.
 6. The respondent further states that the application has not provided sufficient reasons for the delay in filing the appeal, nor attributed the delay to any mistakes; that the intended appeal is misguided, vexatious and an abuse of the Court process and is not aligned with the overriding objectives of civil litigation, namely the just expeditious and proportionate resolution of disputes. The respondent asserts that the applicant has failed to place sufficient material before the Court to explain the delay. The respondent asserts that it will suffer great prejudice if the application is allowed as it seeks to undermine its mandate to train qualified persons as advocates, a matter of great public interest.
 7. In submissions dated 30th January, 2025, the applicant argues that the law does not set out a minimum period of delay but only requires that such delay be satisfactorily explained. He submits that he thought that his former advocates had filed his appeal on time following their agreement to lodge the appeal on condition that the applicant would offset the legal fees. It was only after making several enquiries and visiting his advocates to follow up on the appeal that he learnt that the memorandum and record of appeal had not been filed. He had immediately thereafter enlisted the services of a new advocate who had filed the present application. He further submits that the mistake of his advocate should not bar this Court from exercising its discretion in his favour as he was diligent in following up on the status of the appeal.
 8. The respondent has not filed submissions in opposition to the application
 9. Rule 4 of the Rules of this Court grant the Court discretion to extend time for the doing of any act prescribed under the Rules. In exercising this discretion, the Court is required to consider the length of the delay, the reasons for the delay, (possible) the chances of the appeal succeeding if the application is granted, and the degree of prejudice to the respondent if the application is allowed- see *Fakir Mohammed v. Joseph Mugambi & 2 others* [2005] eKLR and *Mwangi v Kenya Airways Limited* [2003] KLR 486.
 10. In this case, judgment in the matter was delivered on 30th July 2024, and a notice of appeal was filed on 6th August 2024. The applicant avers that he instructed his then advocates to file a memorandum of appeal and record of appeal, but this was not done, He blames the delay in filing this application, brought on 27th November 2024, 120 days from the date of the judgment, on his inability to raise fees for the appeal, and on the failure by his previous advocates to file the memorandum and record of appeal as they worked out a way of settling the legal fees.
 11. Having considered the length of the delay and the explanation for it, I am satisfied that though long, it is not inordinate, and it has been sufficiently explained.



12. As to the chances of the intended appeal succeeding, I have noted the contention by the respondent that the issues that the applicant intends to raise on appeal have been the subject of a prior judgment of this Court. That may well be the case, and the applicant will be well advised to consider the said decision and its implications for his intended appeal. Noting, however, that I do not have the applicant's memorandum of appeal or the judgment that the respondent makes reference to, I cannot sufficiently gauge whether or not the intended appeal has, as the respondent contends, virtually no chance of succeeding.
13. Accordingly, I find that the application dated 27th November 2024 is merited, and I therefore allow it. The applicant shall file and serve his memorandum and record of appeal within 45 days from the date hereof. There shall be no order as to costs.

DATED AND DELIVERED AT NAIROBI THIS 2ND DAY OF MAY, 2025.

MUMBI NGUGI

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JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR.

