



**PKG v MWW (Civil Appeal (Application) E024 of 2025)
[2025] KECA 1457 (KLR) (31 July 2025) (Ruling)**

Neutral citation: [2025] KECA 1457 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPEAL (APPLICATION) E024 OF 2025
J MOHAMMED, JA
JULY 31, 2025**

BETWEEN

PKG APPLICANT

AND

MWW RESPONDENT

(An application for extension of time to file Notice of Appeal against the judgment of the High Court at Milimani (H. R. Namisi J.) dated 18th December, 2024 in HCEA/E119/2024)

RULING

1. PKG, [the applicant], has vide a notice of motion dated 12th January, 2025 invoked the jurisdiction of this Court pursuant to the provisions of Articles 47, 48,50, 53 & 159[2][d] of the Constitution, Section 72[1] of the Civil Procedure Act, Section 95[3] of the Children’s Act, 2022, Order 42, rule 13 of the Civil Procedure Rules and Rules 4, 12, 42 & 44 of the Court of Appeal Rules, 2022 [this Court’s Rules] seeking orders in the main:
 - a. That the applicant’s Notice of Appeal [PKG v MWW] dated 30th December, 2024 and filed on 31st December, 2024 be deemed to have been filed on time;
 - b. That in the alternative and without prejudice to the foregoing, extension of time be granted and the applicant be granted leave to file or refile the Notice of Appeal out of time; MWW is the respondent herein.
2. The motion is supported on the grounds on the face of the motion that the applicant filed Notice of Appeal on 30th December 2024 and 31st December 2024; and that both were rejected by the Deputy Registrar of the Court. The Notice of Appeal was rejected along with the Record of Appeal for lack of a typed record of the High Court proceedings which were not ready at the time of filing. That the impugned judgment of the High Court was delivered on 18th December 2024; that the applicant filed



an application under certificate of urgency before the High Court with a Notice of Appeal against the Lower Court's Ruling on his application for custody orders and that what was properly on record before the High Court was the application and not the appeal. That the High Court delivered its judgment without hearing the appeal and did not deliver the ruling on the application as scheduled. That the respondent elected not to respond to the applicant's application at the trial court neither did she respond to the appeal at the High Court despite service.

3. The application is supported by an affidavit of the applicant reiterating the grounds of the motion.
4. The applicant filed his written submissions dated 15th May 2025 and submitted that the impugned judgment was delivered on 18th December, 2024. It is the applicant's submission that he filed the Notice of Appeal dated 30th December, 2024 against the impugned judgment. That he filed another Notice of Appeal dated 31st December, 2024 but he received communication from the Deputy Registrar of the Court that the appeal had been rejected. That from the portal, the reasons given for rejection of the appeal was "incomplete record of appeal, due to High Court proceedings missing." The applicant submitted that the Deputy Registrar was not justified to reject the appeal for want of typed court proceedings. That the applicant had applied and paid for the proceedings and that the matter was beyond his control. That the powers of the Deputy Registrar under rule 14 of *this Court's Rules* ought not to surmount Article 159 of the *Constitution* on undue regard to procedural technicalities.
5. As regards the success of the intended appeal, the applicant submitted that the intended appeal is arguable as the High Court determined the appeal without hearing the parties. Further, that the first appeal before the High Court was struck out for reasons of incomplete record of appeal. The applicant submitted that the High Court ought to have given the parties a hearing and an opportunity to avail the missing documents to assist the court in determining the matter.
6. From the record, there is no response or written submissions by or for the respondent. The respondent or her counsel did not appear at the virtual hearing of the application, despite service.

Determination

7. The discretion granted to this Court by Rule 4 of *this Court's Rules* when considering an application for extension of time must be exercised judiciously. The party seeking extension of time must have a good explanation for the delay, demonstrate that the delay is not inordinate and that the respondent will not suffer prejudice if an extension of time is granted and, possibly, that the intended appeal has good prospects of success. See *Fakir Mohamed v Joseph Mugambi & 2 others* [2005] [eKLR].
8. The Notice of Appeal was filed on 30th December, 2024 against the judgment of the High Court delivered on 18th December, 2024. Rule 77 of *this Court's Rules* provides for lodging of a Notice of Appeal as follows:
 1. A person who desires to appeal to the Court shall give notice in writing, which notice shall be lodged in two copies, with the registrar of the superior court.
 2. Each notice under subrule [1] shall, subject to rules 84 and 97, be lodged within fourteen days after the date of the decision against the decision for which appeal is lodged.
 3. Each notice of appeal under subrule [1] shall state whether it is intended to appeal against the whole or part only of the decision and, where it is intended to appeal against a part only of the decision, shall—
 - a. specify the part complained of;



- b. the address for service of the appellant; and
 - c. the names and addresses of the persons intended to be served with copies of the notice.
9. The impugned judgment having been delivered on 18th December, 2024 and taking into account the Christmas holidays, the Notice of appeal filed on 30th December 2024 was filed within time. It is therefore the finding of this Court that the applicant's Notice of Appeal dated 30th December, 2024 was duly filed within time as required by law under Rule 77 of this Court's Rules.
10. As regards the success of the appeal, this Court in Athuman Nusura Juma v Afwa Mohamed Ramadhan, CA No. 227 of 2015 stated as follows:

“This Court has been careful to ensure that whether the intended appeal has merits or not is not an issue determined with finality by a single judge. That is why in virtually all its decisions on the considerations upon which discretion to extend time is exercised, the Court has prefixed the consideration whether the intended appeal has chances of success with the word “possibly.”
11. As to prejudice on the respondent. I find that the respondent has not responded to the application. However, taking into consideration that the notice of appeal was filed within time, this Court finds that no prejudice will be suffered by the respondent if the application is allowed.
12. Consequently, this Court finds that the notice of motion dated 12th January 2025 is merited and is allowed. Accordingly, I direct as follows:
 - a. That the notice of appeal filed on 30th December 2024 was filed within time.
 - b. That the notice of appeal be served on counsel for the respondent within seven [7] days from the date hereof;
 - c. That the applicant files and serves the record of appeal within sixty [60] days from the date hereof;
 - d. Costs of the application to abide by the outcome of the intended appeal.
13. It is so ordered.

DATED AND DELIVERED AT NAIROBI THIS 31ST DAY OF JULY, 2025

JAMILA MOHAMMED

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JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

