



**Geminia Insurance Company Limited v Nchoe (Civil Application  
E014 of 2025) [2025] KECA 1181 (KLR) (2 July 2025) (Ruling)**

Neutral citation: [2025] KECA 1181 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAKURU  
CIVIL APPLICATION E014 OF 2025**

**JM MATIVO, JA**

**JULY 2, 2025**

**BETWEEN**

**GEMINIA INSURANCE COMPANY LIMITED ..... APPLICANT**

**AND**

**NELLY NASERIAN NCHOE ..... RESPONDENT**

*(Being an application for leave to file appeal out of time arising from  
the judgment and decree of the High Court of Kenya at Kilgoris (F.  
Gikonyo, J.) dated 6th December, 2024 in Civil Appeal No. E004 of 2023)*

**RULING**

1. Before me for determination is an application dated 14<sup>th</sup> February 2025, brought under rule 4 of the Court of Appeal Rules, 2022 in which the applicant prays for leave to file a notice of appeal out of time against the judgment delivered on 6<sup>th</sup> December 2024 by Gikonyo, J. in Kilgoris HCCA No. E004 of 2023, (Geminia Insurance Co. Ltd v Nelly Naserian Nchoe).
2. The application is premised on the grounds listed on its face and the supporting affidavit sworn on 14<sup>th</sup> February 2025 by the applicant's Legal Manager Ms. Lilian Munyi. The grounds are: (a) as at the time the judgment was delivered, the matter was being handled by the Senior Legal Officer Mr. Eric Onderi who has since left the applicant; (b) that the instruction on the appeal were sent to Mr. Eric Onderi via his email yet he had left the company with effect from 1<sup>st</sup> December 2024; (c) the advocate on record for the applicant took their Christmas vacation on 13<sup>th</sup> December 2024 and it is only on resuming from their Christmas holiday that the applicant discovered their advice regarding the judgment had not been acted upon as the same had not been brought to the applicant's attention on time; (d) the applicant's appeal raises serious legal issues and it is in the interest of justice that the orders sought herein.
3. In opposition to the application, the respondent filed her replying affidavit sworn on 7<sup>th</sup> April, 2025. The salient averments are:



- (a) the applicant duly represented by its counsel neglected or ignored to lodge an appeal within the legal timeframe;
  - (b) delay defeats equity and equity aids the vigilant and not the indolent;
  - (c) the instant application and the intended appeal are a delaying tactic to deny the respondent the fruits of the judgment which has been determined twice;
  - (d) the application together with the draft memorandum of appeal as drawn are a sham and an academic exercise;
  - (e) Mr. Eric Onderi is a stranger to these proceedings and there is no proof he ever worked for the applicant or resigned;
  - (f) the Lilian Munyiri being the applicant's Legal Manager ought to be aware of all matters handled by officers under her department;
  - (g) the admission by Lilian that the applicant was sent a communication on 9<sup>th</sup> December 2024 communicating the outcome of the case is proof that the applicant was well informed and the closure of the applicant's advocate office does not stop time from running;
  - (h) the instant application ought to be dismissed in the interest of justice.
4. On 25<sup>th</sup> June 2025 at 16.00 pm, the Deputy Registrar of this Court sent out an amended hearing notice via e-mail informing counsel/the parties herein that the instant application would be heard by way of written submissions and there shall be no appearance of counsel in Court or via video link. In that regard, the applicant and the respondent were reminded to comply with the Court's directions relating to service and filing of submissions before the hearing date.
5. Today, 2<sup>nd</sup> July 2025 at 9.00 am when the application came up for hearing before me, and as at the time of writing this ruling, none of the parties had complied with the Court's directions. The directions were communicated to the parties respective e-mails:xxxxy@gmail.
6. Rule 58 of the *Court of Appeal Rules, 2022* stipulates as follows:
- 1. If, on any day fixed for the hearing of an application, the applicant does not appear or comply with directions, the application may be dismissed, unless the Court sees fit to adjourn the hearing: Provided that the Court may order that an application may be heard by way of written submissions and where parties have filed written submissions, the Court shall consider the submissions.
7. Pursuant to the above rule, and being duly satisfied that the parties were duly served as herein above stated, and despite being served, they have failed to comply with the Court's directions. Accordingly, I hereby dismiss the instant Application in accordance with rule 58 (1) of this Court for non-compliance with the directions of the court issued on June 25, 2025. I make no orders as to costs. Orders accordingly.

**DATED AND DELIVERED AT NAKURU THIS 2<sup>ND</sup> DAY OF JULY, 2025.**

**J. MATIVO**

**JUDGE OF APPEAL**

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



Signed.

**DEPUTY REGISTRAR**

