



Nyaboga v Chiemeke (The legal representative of Agustina Ngozi Ngwu) (Civil Application E071 of 2023) [2024] KECA 752 (KLR) (21 June 2024) (Ruling)

Neutral citation: [2024] KECA 752 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAKURU
CIVIL APPLICATION E071 OF 2023
FA OCHIENG, JA
JUNE 21, 2024**

BETWEEN

DAVID NYABOGA APPLICANT

AND

**ROSEMARY ADAEZE CHIEMEKE (THE LEGAL REPRESENTATIVE OF
AGUSTINA NGOZI NGWU) RESPONDENT**

(An application for enlargement of time to allow the applicant serve a notice of appeal outside the requisite time under the Court of Appeal Rules)

RULING

(An application for enlargement of time to allow the applicant serve a notice of appeal outside the requisite time under the Court of Appeal Rules)

1. The applicant, David Nyaboga invoked the provisions of Rule 4 of the [Court of Appeal Rules, 2022](#), in seeking an extension of time within which the Notice of Appeal could be served.
2. In his supporting affidavit, Elijah Momanyi Mogona, the learned advocate for the applicant, deponed that the notice of appeal was dated 9th November 2023, but was filed on 14th November 2023. However, it was only on 30th November 2023 that the learned Deputy Registrar signed and released the said notice, to the applicant’s counsel.
3. On the following day, (being 1st December 2023), the applicant served the notice of appeal, upon the respondent.
4. Pursuant to Rule 79 of the [Court of Appeal Rules](#), a notice of appeal ought to be served within 7 days of it being lodged in court.



5. Therefore, as observed by the applicant, he was late in serving the notice of appeal. It is for that reason that the applicant has asked the Court to extend the time for service of the notice of appeal, so that although he had served it late, it ought to be deemed as having been served within the time, as extended by the Court.
6. Although the respondent was served with the application, she did not file any response thereto. In effect, the application is uncontroverted.
7. Secondly, I find that the orders sought, if granted would not occasion any prejudice to the respondent.
8. Furthermore, the application has been lodged in a timeous manner.
9. I therefore find no reason that would be a hurdle to the grant of the orders sought.
10. Accordingly, it is hereby ordered that the time for the service of the notice of appeal, be and is hereby extended. Consequently, I order that the notice of appeal which was served on 1st December, 2023 be deemed to have been served within time, as extended by the Court.
11. Finally, I order that costs of the application be in the cause, in the substantive appeal.

DELIVERED AND DATED AT NAKURU THIS 21ST DAY OF JUNE, 2024.

F. OCHIENG

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JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

