



**Chagoche v Kenya National Examination Council (Civil Application  
E2 of 2021) [2022] KECA 409 (KLR) (4 March 2022) (Ruling)**

Neutral citation: [2022] KECA 409 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAIROBI  
CIVIL APPLICATION E2 OF 2021  
S OLE KANTAI, JA  
MARCH 4, 2022**

**BETWEEN**

**THOMAS MAKONGO CHAGOCHÉ ..... APPLICANT**

**AND**

**KENYA NATIONAL EXAMINATION COUNCIL ..... RESPONDENT**

*(An application for extension of time from the Judgment of the High Court of Kenya at Nairobi (Mativo, J.) dated 17th January, 2018 in JR. Petition No. 102 of 2016)*

**RULING**

1. The applicant, Thomas Makongo Chagoche, has brought this application under rule 4 of the Court of Appeal Rules where he prays in the main that the notice of appeal filed on 24th January, 2018 be deemed as properly filed and that I be pleased to extend the time within which the applicant may file record of appeal and the record of appeal already filed be deemed as properly on record. In grounds in support of the Motion and in a supporting affidavit of the applicant he says that he filed High Court Petition No. 102 of 2016 where he was the petitioner in March, 2016 against the respondent (Kenya National Examination Council) after the respondent had declined to correct a name error on his Kenya Certificate of Secondary Education (KCSE) result slip as ordered by a subordinate court where the respondent had filed criminal charges against him on a charge of making a false document. He had filed the petition as a pauper after obtaining necessary orders from court but after hearing, Mativo, J. dismissed his petition in a Judgment delivered on 17th January, 2018. The applicant filed a notice of appeal on 24th January, 2021 and served the same upon the respondent on 31st January, 2021 as stated on ground 4 of the grounds in support of the Motion. On 16th March, 2018 the applicant filed an application under rule 115 of the *Court of Appeal Rules* asking that he be excused from paying court fees and that the Registrar of the High Court prepare records of appeal for him. That application was dismissed. At around that time the applicant lost his father forcing him to fend for his siblings and was also found to have Tuberculosis (TB) which he suffered for over 6 months and after recovery he



made serious efforts with several government agencies to procure release of his KCSE certificate but this was all in vain. Even his application to the Magistrate’s Court at Kibera seeking to cite the Secretary of the respondent for contempt of court for disobeying a court order was dismissed. The applicant was admitted to the Kenya Medical Training Centre in the year 2011 but has been unable to register to undertake a nursing course because he does not hold a KCSE Certificate. He believes that his appeal has high chances of success.

2. I have not seen any replying affidavit or submissions by the respondent who was served with a hearing notice on 25th February, 2022 at 9.13 a.m. where it was stated inter alia that the application should be heard through written submissions which were to be filed within time limited. I have seen and considered the applicant’s written submissions.
3. Although the applicant states in grounds in support of the Motion and in the affidavit that he filed notice of appeal in the year 2021 there seems to be some confusion in that Notice of Appeal dated 24th January, 2016 which was about 2 years before the Judgment, Judgment intended to be appealed was delivered on 17th January, 2018. That Notice of Appeal was received by the High Court Constitutional and Human Rights Division on 24th January, 2018, 7 days after Judgment was delivered. Memorandum of Appeal is dated 16th March, 2018 where 5 grounds of appeal are taken.
4. The principles that apply in an application of this nature are well known and are well summarized in the case of *Fakir Mohamed v Joseph Mugambi & 2 Others Civil Application No. 332 of 2004* as follows:

“The exercise of this Court’s discretion under Rule 4 has followed a well-beaten path since the stricture of “sufficient reason” was removed by amendment in 1985. As it is unfettered, there is no limit to the number of factors the court would consider so long as they are relevant. The period of delay, the reason for the delay (possibly) the chances of the appeal succeeding if the application is granted, the degree of prejudice to the respondent if the application is granted, the effect of the delay on public administration, the importance of compliance with time limits, the resources of the parties, whether the matter raises issues of public importance – are all relevant but not exhaustive factors: See *Mutiso v Mwangi*, Civil Application No. NAI. 255 of 1997 (ur), *Mwangi v Kenya Airways Limited* [2003] KLR 496, *Major Joseph Mwereri Igweta v Murika Methare & Attorney General* Civil Application No. NAI 8 of 2000 (ur) and *Murai v Wainaina (No. 4) 1982 KLR 38*.”
5. I have noted the confusion by the applicant on when certain events take place. He states that he filed notice of appeal and record of appeal in 2021 but the notice of appeal was actually filed 7 days after Judgment and was received by the High Court on 24th January, 2018 within the time required to do so by Court of Appeal Rules. I note that the applicant has made many efforts to prove his case and has approached many institutions of government to pursue his case. He was admitted to pursue a nursing course but could not do so in absence of a KCSE Certificate which seemingly was issued with incorrect names. The applicant filed a Notice of Appeal within time and looking at the Memorandum of Appeal his grounds raised are not idle grounds, they are substantial grounds.
6. The applicant has satisfied me that he is entitled to my exercise of discretion in his favour. I allow the application. Let the applicant serve Notice of Appeal within the next 7 days and thereafter file Record of Appeal within 30 days. I make no order on costs.

**DATED AND DELIVERED AT NAIROBI THIS 4TH DAY OF MARCH, 2022.**

**S. ole KANTAI**

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**JUDGE OF APPEAL**

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

*Signed*

**DEPUTY REGISTRAR**

