



REPUBLIC OF KENYA



**KENYA LAW**  
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**Mutinda v Munyasili (Civil Appeal E099 of 2024)  
[2025] KEHC 11226 (KLR) (Family) (24 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 11226 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
FAMILY  
CIVIL APPEAL E099 OF 2024  
CJ KENDAGOR, J  
JULY 24, 2025**

**BETWEEN**

**CAROLYNE FAITH NGONYO MUTINDA ..... APPELLANT**

**AND**

**CAROLYNE MUNYASILIL ..... RESPONDENT**

**RULING**

1. This Ruling emanates from an earlier Ruling of this Court dated 25<sup>th</sup> March, 2025 in which this Court ordered a stay of the implementation of the Certificate of Confirmation of Grant issued in Milimani Chief Magistrates' Court Family Succession Cause No. E055 of 2023 pending the hearing and determination of this appeal. The Court also ordered the Applicant to file Record of Appeal within 21 days, failure of which the stay order would lapse.
2. The Applicant did not file the Record of Appeal within the 21 days. She brought the instant application seeking the following orders;
  1. Spent
  2. That this Honourable Court be pleased to vary the orders given by Hon. Lady Justice Carolyn Kendagor on 25<sup>th</sup> March, 2025 allowing the Applicant to file the Record of Appeal within 21 days in default of which the orders given for time to file the appeal and staying the implementation of the Certificate of Confirmation of Grant and all consequential orders arising in Milimani Chief Magistrate's Court Family Succession Cause E055 of 2023 would lapse.
  3. That this Honourable Court be pleased to extend and or enlarge the time given to file the Record of Appeal and the Memorandum of Appeal filed in HCCA No. E436 of 2025



Carolyn Faith Ngonyo Mutinda vs. Caroline Munyasili 14/4/2025 and the Record of Appeal filed on 15/5/2025 by the Appellant Applicant be admitted as properly filed and served and be consolidated with High Court Miscellaneous Application HCFA E099 of 2025 Carolyn Faith Ngonyo Mutinda vs Caroline Munyasili.

4. Spent.
  5. That pending the hearing and determination of the Appeal, an interim injunction be issued restraining the Respondent, her servants and or agents from intermeddling, accessing, withdrawing monies held in accounts in banks/financial institutions, appropriating, transferring, selling, disposing or in any way interfering with the properties of the Deceased to wit;
    - i. Employee benefits in Nairobi Water & Sewerage Company Ltd dues- Employee No.01xxx.
    - ii. Monies held in Stanbic Bank Account No. 01xxx
    - iii. Monies held in Stanbic Account No. 01xxx
    - iv. Monies held in SBM Account No. 04xxx
    - v. Monies held in Username Real Estate Account CU 1xxx
    - vi. L.R No. Mavoko Town Block x/xxx measuring 0.030 Ha.
    - vii. Monies held in ICEA Lion Money Market Fund Account No.10xxx
    - viii. L.R. NO. Kajiado/Ntashart/xxx measuring 0.045 Ha.
    - ix. L.R No. Donyo Sabuk/Komarock Block x/xxx measuring 0.04 Ha.
    - x. L.R No. Kajiado/Ntashart/xxx measuring 0.04 Ha.
    - xi. Iria-ini/Kaguthu/xxx measuring 0.0335 Ha holding in trust for Tianna Bernice Wanjiku Irimu.
    - xii. Monies held in Jamii Sacco Society Account No. 13xxx
    - xiii. Motor Vehicle Registration No. KCZ xxxF.
  6. That monies already withdrawn by the Respondent in September 2024 from Nairobi City Water & Sewerage Company being employee benefits of the Deceased and any other property of the Deceased already transferred to the Respondent while this matter was ongoing and when the Court had issued interim orders of injunction be paid pack to the Estate in full.
  7. That this Honourable Court be pleased to grant any other order suitable in the circumstances.
  8. That the costs of this application be granted to the Applicant.
3. The grounds of the Application were enlisted on its face and supported by an affidavit sworn by the Applicant and dated 28<sup>th</sup> April, 2025. The Applicant averred that she failed to file the Record of Appeal within the timelines given by the Court because there was a delay in obtaining typed proceedings. She stated that she obtained the typed proceedings on 15<sup>th</sup> April, 2025 yet the Court orders required her to file the Record of Appeal by 14<sup>th</sup> April, 2025.



4. She also stated that she mistakenly filed the Record of Appeal on 15<sup>th</sup> April, 2025 under High Court Civil Appeals Division as HCCA No E436 of 2025 instead of Family Division Appeals. She averred that the Court Registry advised her to refile the same in the Family Division, which she did via HCFA No. E056 of 2025. She stated that the error in filing in the wrong division was caused by the rush to beat the timelines, was inadvertent, and excusable. She stated that one day delay should not be used to deny her the chance to have her Appeal heard, as the delay was outside her control or that of her advocate.
5. The Respondent filed a Replying Affidavit sworn by her and dated 9<sup>th</sup> June, 2025 in which she opposed the Application. She stated that the Applicant has not demonstrated any sufficient grounds to warrant this Court to vary its orders issued on 25<sup>th</sup> March, 2025. She also stated that the delay in obtaining the typed proceedings did not preclude the Applicant from filing the Record of Appeal, as she remained at liberty to file a Supplementary Record to incorporate the proceedings and the certificate of delay at a later stage.
6. The Applicant filed a Supplementary Affidavit sworn by the Applicant's counsel (M. N. W) and dated 10<sup>th</sup> June, 2025 in which she explained the circumstances under which she filed the Record of Appeal. She stated that she diligently pursued the typed proceedings, but there was a delay in obtaining the same. She stated that she was not aware that the Appeal should have been filed under this file, HCFA No E099 of 2024. She explained that she mistakenly thought that the Appeal had to be filed as a new Appeal, because the matter herein had been filed initially as a Miscellaneous Application.
7. The Application was canvassed by way of written submissions.

#### **Applicant's Written Submissions**

8. The Applicant submitted that this Court should allow the Application and grant her a further extension of time to file the Record of Appeal. She argued that the mistake of filing the Appeal in a different Division and filing one day late should not be used to deny her justice. She argued that she missed the Court's timelines due to the registry's delay in providing the certified typed proceedings. She also argued that her advocate's mistake of filing the Appeal in the wrong Division was an inadvertent and excusable error on the part of the counsel, and the same should not be visited upon her and the minor.

#### **Respondent's Written Submissions**

9. The Respondent submitted that this Court should dismiss the Application and deny the Applicant a further extension of time to file the Record of Appeal. She argued that the Applicant's delay is inordinate and inexcusable with no justifiable reason for the same. She argued that the Applicant has not provided any reasonable cause for the failure to file the Record of Appeal within the 21 days granted by the Court. She also submitted that this Court should not consolidate HCCA No E436 of 2025 and HCFA No E056 of 2025. She argued that the Court is a stranger to those matters and thus does not have powers to consolidate them or issue directions in either of those matters.

#### **Issues for Determination**

10. Having carefully considered the ground of the Application, the various affidavits, and the submissions by the parties, I find that there is only one issue for determination;
  - a. Whether this Court should grant the Applicant a further extension of time to file the Record of Appeal.



11. Over the years, Courts have set out guidelines on what a single Judge should consider when dealing with an application for extension of time. The Supreme Court in the *Nicholas Kiptoo Arap Korir Salat v Independent Electoral and Boundaries Commission & 7 others* [2014] eKLR interrogated this issue and observed as follows;

This being the first case in which this Court is called upon to consider the principles for extension of time, we derive the following as the under-lying principles that a Court should consider in exercise of such discretion:

1. Extension of time is not a right of a party. It is an equitable remedy that is only available to a deserving party at the discretion of the Court;
2. A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the court
3. Whether the court should exercise the discretion to extend time, is a consideration to be made on a case to case basis;
4. Whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the Court;
5. Whether there will be any prejudice suffered by the respondents if the extension is granted;
6. Whether the application has been brought without undue delay; and
7. Whether in certain cases, like election petitions, public interest should be a consideration for extending time.

12. Similarly, the Court of Appeal in *Leo Sila Mutiso v Rose Hellen Wangari Mwangi* (Civil Application No Nai 255 of 1997) (unreported) considered a similar issue and expressed itself thus;

“It is now well settled that the decision whether or not to extend the time for appealing is essentially discretionary. It is also well settled that in general the matters which this court takes into account in deciding whether to grant an extension of time are: first, the length of the delay: secondly, the reason for the delay: thirdly (possibly), the chances of the appeal succeeding if the application is granted: and, fourthly, the degree of prejudice to the respondent if the application is granted.”

13. Lastly, the Court in *Mativo & another v Kuria & 20 others; Mativo (Interested Party)* (Civil Application E082 of 2023) [2024] KECA 808 eKLR observed as follows;

“In determining an application brought under the stated rule, I am required to exercise my discretion judiciously and upon reason. The discretion should not be exercised capriciously or whimsically... The stated principles are neither exhaustive nor should all of them be considered in every application. A court seized of an application is therefore at liberty to determine which principles or factors will determine the application before it”.

14. Turning to the facts of the instant Application, this Court delivered a Ruling on 25<sup>th</sup> March, 2025 in which it ordered the Applicant to file the Record of Appeal within 21 days. In this Court’s calculation, the 21 days lapsed on 14<sup>th</sup> April, 2025. According to the record, the Applicant filed the instant Application on 29<sup>th</sup> April, 2025, meaning the same was filed about 15 days after the lapse of the time



given by the Court. Based on these facts, I find that the delay in bringing the instant application is about 15 days. As to whether such a delay was inordinate or not, it is my view that the period of the delay is not inordinate.

15. The next issue for determination is whether the Applicant has given a reasonable explanation why she did not file the Record of Appeal within the 21 days given by the Court. The Applicant stated that she had challenges obtaining the certified copy of the typed proceedings. The record shows that the copies of the typed proceedings were issued on 14<sup>th</sup> April, 2025. The Applicant also produced a Certificate of Delay from the Milimani Chief Magistrate's Court indicating that the typed proceedings were prepared on 14<sup>th</sup> April, 2025 and that the Certificate of Delay was ready for collection on 25<sup>th</sup> April, 2025.
16. I associate myself with the observations of the Court in *Bernard Muthee & another v Anita Kamba Mwiti* [2021] eKLR, where the Court addressed difficulties faced by a party trying to obtain typed proceedings as follows:-

“Concerning the reasons advanced of difficulties in obtaining the record of typed proceedings from the court registry, this court recognizes that there is an avenue to file an initial record of appeal and thereafter file a supplementary record once the proceedings are obtained. This would have been the best course to take and would be more convincing bearing in mind that it was over a period of 8 months between the date when the appellants were ordered to file their record of appeal on December 5, 2019 and when the order confirming the dismissal was made on July 27, 2020. The appellants have also failed to annex evidence in form of correspondence or otherwise to confirm what efforts, if any, they made to secure the said typed proceedings. It is not enough to make mere averments devoid of supporting evidence.”
17. The Applicant in this case annexed correspondence showing the request for the proceedings. She produced a letter addressed to the Executive Officer, Chief Magistrate's Court, Milimani Commercial Court, dated 20<sup>th</sup> August, 2024, requesting the typed proceedings. The Certificate of Delay confirms that the proceedings were requested in a timely manner. However, the Advocate should have exercised due diligence in filing at the correct registry and ensuring that the record was filed in the current case file, not a new one. Courts generally accept that an advocate's errors should not automatically be visited upon the client, especially when there is evidence of an effort to follow directions or adhere to deadlines.
18. For these reasons, I find that the Applicant has explained to the satisfaction of this Court sufficient reason for failing to file the Record of Appeal within the 21 days.
19. Lastly, according to the Rule established in *Leo Sila Mutiso v Rose Hellen Wangari Mwangi (Supra)*, the Court is also mandated to consider whether the appeal is arguable or not. However, in my view, this issue is not open for interrogation because this Court has already pronounced itself on this issue in its Ruling dated 25<sup>th</sup> March, 2025 in which it held that the Grounds of Appeal listed in the Memorandum of Appeal dated 22<sup>nd</sup> August, 2024 are arguable. The Court also found that it was in the best interest of the minor that the issues raised be resolved definitively through the available avenues of Appeal.
20. I find that this Application is merited. In the spirit of Article 159 (2) (d) of *the Constitution* and the overriding objectives stated under Sections 1A and 1B of the *Civil Procedure Act*, this Court considers it just to grant the extension of time sought. This is more so considering the best interests of the Minor (T.B.W.I), who both parties herein agree is a daughter of the Deceased whose Estate is the subject of the current proceedings.



## **Disposition**

21. Accordingly, for the reasons set out hereinabove, the Court exercises discretion in favour of the Applicant and allows the Application dated 28<sup>th</sup> April, 2025 in the following terms:
- a. I order a stay of the implementation of the Certificate of Confirmation of Grant issued on 4<sup>th</sup> March, 2024 and/or all consequential orders in Milimani Chief Magistrates Court Family Succession Cause No. E055 of 2023, pending the hearing and determination of the Appeal.
  - b. The Record of Appeal is to be filed in this file within 7 days; failure of which the stay order shall lapse and the appeal shall stand dismissed with costs to the Respondent.
  - c. The costs of the application shall be in the cause.
22. It is so ordered.

**DATED, DELIVERED AND SIGNED AT NAIROBI THROUGH THE MICROSOFT TEAMS ONLINE PLATFORM ON THIS 24<sup>TH</sup> DAY OF JULY, 2025.**

.....

**C. KENDAGOR**

**JUDGE**

In the presence of

Court Assistant: Beryl

Ms. Waiganjo, Advocate for the Applicant

No attendance for Respondent

