



Baharini Consultants Ltd v Thuo (Suing as the Personal Representative and Administrator of the Estate of the Deceased Joram Thuo Wairegi) & another (Civil Appeal (Application) E069 of 2025) [2025] KECA 1509 (KLR) (19 September 2025) (Ruling)

Neutral citation: [2025] KECA 1509 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NYERI
CIVIL APPEAL (APPLICATION) E069 OF 2025
JM NGUGI, JA
SEPTEMBER 19, 2025**

BETWEEN

BAHARINI CONSULTANTS LTD APPELLANT

AND

MICHAEL THUO (SUING AS THE PERSONAL REPRESENTATIVE AND ADMINISTRATOR OF THE ESTATE OF THE DECEASED JORAM THUO WAIREGI) 1ST RESPONDENT

KAYLIFT SERVICES LIMITED 2ND RESPONDENT

(Being an Application for extension of time to file an appeal against the Ruling of the High Court of Kenya at Nyeri, (Magare, J.) dated 8th July, 2024 in HCCC No. 39 of 2002 As Consolidated With HCCC No. 121 of 2001)

RULING

1. Before me is an application dated 28th July, 2024 brought under Rule 4 of the Court of Appeal Rules seeking extension of time to file the record of appeal against the ruling of the High Court at Nyeri in HCCC No. 39 of 2002 as consolidated with HCCC No. 121 of 2001 (Hon. Justice Kizito Magare) delivered on 8th July 2024.
2. The background is that on 8th July, 2024, the Honourable Justice Kizito Magare delivered a ruling in Nyeri HCCC No. 39 of 2002 as consolidated with HCCC No. 121 of 2001 dismissing the Applicant's objection application dated 20th September, 2023 with costs, on grounds that the Applicant had not established ownership of the goods proclaimed on 19th September, 2023. Dissatisfied, the Applicant lodged a Notice of Appeal dated 22nd July, 2024, and wrote to request for typed proceedings by a letter dated 24th July, 2024. The Applicant candidly admits that the record of appeal was not filed within the sixty (60) days prescribed, attributing the delay to late receipt of typed proceedings, which were only



availed on 15th November 2024. The Applicant also candidly admits that its counsel failed to copy the letter bespeaking proceedings to the counsel for the respondents.

3. The Applicant submits that the delay is not inordinate, that they have an arguable appeal with high chances of success, and that no prejudice will be suffered by the Respondent if time is enlarged. Counsel relies on Article 50 of the Constitution guaranteeing the right to a fair hearing.
4. Although the respondents were duly served with both the application and the hearing notice, they did not file any replying affidavit or submissions in opposition to the application.
5. The governing provision is Rule 4 of the Court of Appeal Rules which provides that:

“The Court may, on such terms as it thinks just, by order extend the time limited by these Rules, or by any decision of the Court or of a superior court, for the doing of any act authorized or required by these Rules, whether before or after the doing of the act, and a reference in these Rules to any such time shall be construed as a reference to that time as extended.”

6. The principles governing the exercise of this Court’s discretion under Rule 4 are well settled. In *Leo Sila Mutiso v Rose Hellen Wangari Mwangi*, Civil Application No. Nai. 255 of 1997, the Court stated:

“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.”

7. Applying those factors to this case, I note that the delay from the expiry of the statutory period to the filing of this application is not excessive, given that the typed proceedings were only availed on 15th November, 2024. The explanation tendered by the Applicant is plausible. The intended appeal is not frivolous as it raises issues of ownership of attached property, which are arguable points. As to prejudice, none has been demonstrated to be suffered by the Respondent that cannot be compensated by an award of costs.
8. In the result, I find that this is a proper case for exercise of this Court’s discretion in favour of the Applicant. Accordingly, the application is allowed. The Applicant shall file and serve the record of appeal within thirty (30) days of today. Costs of this application shall abide the outcome of the appeal.
9. Orders accordingly.

DATED AND DELIVERED AT NYERI THIS 19TH DAY OF SEPTEMBER, 2025.

JOEL NGUGI

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JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR

