



**Marete & another v Murwanja (Civil Application E077 of 2025)  
[2025] KECA 1505 (KLR) (19 September 2025) (Ruling)**

Neutral citation: [2025] KECA 1505 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NYERI  
CIVIL APPLICATION E077 OF 2025  
JM NGUGI, JA  
SEPTEMBER 19, 2025**

**BETWEEN**

**JOHN MURIUKI MARETE ..... 1<sup>ST</sup> APPLICANT**

**KABURU MWONGERA ..... 2<sup>ND</sup> APPLICANT**

**AND**

**STEPHEN MURWANJA ..... RESPONDENT**

*(Being an Application for leave to file Appeal out of time against the Ruling of the High Court of Kenya at Meru, (Cherere, J.) dated 18th April, 2024 in Succession Cause No. 238 of 2005)*

**RULING**

1. The Applicants have moved this Court by a Notice of Motion dated 20<sup>th</sup> May 2025, seeking leave to lodge an appeal out of time against the ruling of the High Court at Meru (Succession Cause No. 238 of 2005) delivered on 18<sup>th</sup> April 2024.
2. The application is expressed to be brought, among other legal provisions, under Rule 4 of the Court of Appeal Rules. It is supported by the affidavit of John Muriuki Marete, one of the Applicants, and is opposed through the replying affidavit of the Respondent, Stephen Murwanja, sworn on 28<sup>th</sup> May, 2025. Both parties also filed written submissions.
3. The Applicants were holders of a Grant of Letters of Administration in respect of the estate of the late Zipporah Nduru M'mbiro, whose estate comprises, inter alia, parcels Kiirua/Naari/1945 and Kiirua/Naari/1661.
4. By a ruling dated 18<sup>th</sup> April 2024, the High Court nullified the Applicants' grant and awarded the entire estate to the Respondent, who is a nephew of the deceased. The Applicants contend that they were dependents of the deceased and in occupation of her land long before and after her demise. They now wish to appeal against that decision.



5. According to the Applicants, they were unable to file an appeal within time due to financial hardship which prevented them from raising legal fees. They further aver that unless the orders sought are granted, the Respondent will dispose of the properties, thereby rendering them homeless.
6. The Respondent opposes the application, arguing that the delay of over one year is inordinate, that no satisfactory explanation has been given, and that the intended appeal is inarguable since succession appeals are not as of right. The Respondent stresses that the Applicants had counsel in the High Court who was well placed to advise them on both the need for leave to appeal and on the availability of waiver of filing fees under Rule 120 of this Court's Rules.
7. The law governing this application is Rule 4 of the Court of Appeal Rules which provides:

“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.”
8. Whereas this Rule does not list the factors the court ought to consider in an application for extension of time, the courts have devised appropriate principles to be applied in achieving a ‘just’ decision in the circumstances of each case. A case in point is *Leo Sila Mutiso v Hellen Wangari Mwangi* [1999] 2 EA 231 which laid down the parameters as follows:

“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.”
9. I now turn to consider the application against the settled parameters.
10. Length of Delay: The impugned ruling was delivered on 18<sup>th</sup> April 2024. The Applicants were supplied with copies of the ruling and proceedings by 23<sup>rd</sup> May 2024. By law, they were expected to file their appeal within 60 days thereof. Instead, this application was lodged on 20<sup>th</sup> May 2025 — nearly a full year out of time. A delay of one year is, by any standard, inordinate and calls for a compelling explanation.
11. Reason for the Delay: The only reason offered is financial hardship, which allegedly prevented the Applicants from instructing counsel and filing an appeal in good time. While this Court has recognized that impecuniosity may, in some circumstances, constitute sufficient cause, it must be demonstrated with seriousness and supported by credible evidence. In this case, the Applicants were represented by counsel in the High Court, who would have been well placed to advise them on the possibility of seeking waiver of fees under Rule 120 of the Court of Appeal Rules. No explanation has been given as to why such recourse was not pursued for a whole year. I am, therefore, not persuaded that the reason offered is satisfactory.
12. Arguability of the Intended Appeal: The Respondent rightly pointed out that in succession matters, an appeal to this Court does not lie as of right. The Applicants were required to first obtain leave before lodging an appeal. No such leave was sought or obtained. This procedural hurdle alone renders the intended appeal inarguable.



13. Prejudice: If extension were granted, the Respondent, who is the registered proprietor following the High Court's determination, would continue to be kept away from enjoyment of his lawful entitlement. On the other hand, the Applicants have not demonstrated that they hold any superior claim, given that the High Court carefully analyzed the evidence and found that they were step-grandchildren and not dependents within the meaning of the law. The balance of prejudice, therefore, tilts in favour of the Respondent.
14. In the result, I am not satisfied that the Applicants have met the threshold under Rule 4 of the Court of Appeal Rules. The delay of over one year is inordinate; the explanation for the delay is unsatisfactory; the intended appeal is inarguable; and granting the application would occasion prejudice to the Respondent.
15. Accordingly, the Notice of Motion dated 20<sup>th</sup> May, 2025 is hereby dismissed with costs to the Respondent.
16. Orders accordingly.

**DATED AND DELIVERED AT NYERI THIS 19<sup>TH</sup> 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

