



**Mwirigi v Francis & another (Civil Application E094 of 2025)  
[2025] KECA 1504 (KLR) (19 September 2025) (Ruling)**

Neutral citation: [2025] KECA 1504 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NYERI  
CIVIL APPLICATION E094 OF 2025  
JM NGUGI, JA  
SEPTEMBER 19, 2025**

**BETWEEN**

**MARY MWIRIGI ..... APPLICANT**

**AND**

**ESTHER WAITHERA FRANCIS ..... 1<sup>ST</sup> RESPONDENT**

**MURANG'A COUNTY GOVERNMENT ..... 2<sup>ND</sup> RESPONDENT**

*(Being an Application for Extension of time to file and serve the Notice of Appeal out of time in an Intended Appeal from the Judgment of the Environment and Land Court at Murang'a, (Gicheru, J.) dated 5th May, 2025 in ELCA No. E028 of 2023)*

**RULING**

1. The applicant, Mary Mwirigi, has moved this Court by a Notice of Motion dated 15<sup>th</sup> June 2025 under Rule 4 of the Court of Appeal Rules seeking leave to file and serve a Notice of Appeal out of time against the judgment of the Environment and Land Court (Gicheru, J.) delivered on 5<sup>th</sup> May 2025 in ELCA No. E028 of 2023.
2. The motion is supported by the affidavit of Mary Mwirigi sworn on 20<sup>th</sup> June 2025. In summary, the applicant deposes that she was aggrieved by the impugned judgment and had instructed her then advocates, Kitheka & Co. Advocates, to file an appeal. However, the said advocates failed to act on her instructions. At the same time, she was unwell and undergoing treatment at St. Francis Community Hospital in Nairobi, as evidenced by annexed medical documents. Upon recovery, she instructed her present advocates, Tim Kariuki & Co. Advocates, who advised her that the time for filing a Notice of Appeal had lapsed, hence the need for this application.
3. The applicant contends that the delay was not deliberate, but occasioned by her illness and the inadvertence of her previous advocates. She urges that the mistakes of counsel should not be visited upon her.



4. The record shows that a hearing notice for this application was served by the Court registry upon the respondents by email on 22<sup>nd</sup> July 2025. Despite such service, no replying affidavit or submissions have been filed in opposition to the motion.

5. Rule 4 of the Court of Appeal Rules 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.”

6. The guiding principles for the exercise of discretion under Rule 4 were set out in *Leo Sila Mutiso v Rose Hellen Wangari Mwangi* [1999] 2 EA 231, where 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 these principles, I note that the impugned judgment was delivered on 5<sup>th</sup> May 2025. This application was filed soon after the applicant recovered from illness and upon discovery that her former advocates had not lodged the Notice of Appeal as instructed. The delay is therefore explained, and in my view, not inordinate.

8. As regards the arguability of the intended appeal, I note that the controversy regards the alleged double allotment of the parcel known as LR No. 11674/3 situated within Makuyu town with both the applicant and the 1<sup>st</sup> respondent having seemingly bona fide documents. There is an arguable question whether the learned Judge’s assessment of the factual contestations was correct. I, therefore, find that the intended appeal raises bona fide issues deserving consideration by this Court. Further, no prejudice has been demonstrated by the respondents, who, despite being duly served, did not oppose the motion.

9. In the circumstances, I am satisfied that the applicant has met the threshold under Rule 4. Accordingly, the application dated 15<sup>th</sup> June, 2025 is allowed. The applicant shall file and serve her Notice of Appeal within fourteen (14) days from the date hereof.

10. The costs of this application shall abide the outcome of the intended appeal.

11. 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**

