



REPUBLIC OF KENYA



Athi Water Works development Agency v Kamau (Civil Application E703 of 2024) [2025] KECA 1557 (KLR) (3 October 2025) (Ruling)

Neutral citation: [2025] KECA 1557 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPLICATION E703 OF 2024
P NYAMWEYA, JA
OCTOBER 3, 2025**

BETWEEN

ATHI WATER WORKS DEVELOPMENT AGENCY APPLICANT

AND

SAMUEL MACHARIA KAMAU RESPONDENT

(An application for extension of time to file a Notice of Appeal against the Judgment delivered by the Environment and Land Court at Nairobi (M.D Mwangi J.) on 26th November 2024 in ELC Appeal No. E064 of 2021, or in the alternative to have the Notice of Appeal dated 11th December 2024 deemed as duly filed)

RULING

1. Athi Water Works Development Agency, the applicant herein, is by way of an application dated 17th December 2024, seeking orders for extension of time to file a Notice of Appeal against the judgment delivered on 26th November 2024 by the Environment and Land Court (D.M. Mwangi J.) in Nairobi ELC Appeal No. E064 of 2021. The applicant in the alternative prays that this Court deems its Notice of Appeal dated 11th December 2024 and served upon the respondent on 13th December 2024 against the said judgment as duly filed. The subject judgment of the Environment and Land Court allowed an appeal filed by Samuel Macharia Kamau, the respondent herein, and awarded him compensation of Kshs 8,050,000/= for trespass and possession of his land while setting aside the judgment of the Chief Magistrate's Court delivered on 9th August 2021 in Nairobi MCELC No. 2506 of 2019.
2. The application is expressed as being brought pursuant to Rule 4 of the Court of Appeal Rules, and is supported by two affidavits both sworn on 17th December 2024. Engineer Joseph Kamau, the applicant's Chief Executive Officer, swore the first affidavit, and detailed the events that occurred after the delivery of the judgment by the Environment and Land Court. The applicant stated that its advocates acquired the subject judgment on 10th December 2024 and immediately transmitted it



to the applicant, and further lodged a Notice of Appeal on 11th December 2024 of even date. In addition, that the delay in filing the Notice of Appeal dated 11th December 2024 is inadvertent and excusable for the reasons that its advocate erroneously miscalculated the lapse of the 14 days in the filing of the Notice of Appeal, which led to a delay of fifteen (15) hours and thirteen (13) minutes outside the prescribed period of less than one (1) day, on the mistaken ground that the period was set to lapse on 11th December 2024 while the same lapsed on 10th December 2024. Lastly, that the applicant's intended appeal is merited and raises arguable grounds and a draft Memorandum of Appeal was annexed in this respect.

3. The second affidavit was filed by Eric Onyancha, the applicant's advocate, who confirmed that the failure and delay in filing the Notice of Appeal by fifteen (15) hours and thirteen (13) minutes outside the prescribed period was purely his mistake, which he promptly realized and immediately lodged the Notice of Appeal and served the same within the prescribed seven (7) days upon the respondent; he further requested for certified copies of the proceedings of the Environment and Land Court within the prescribed time, which request was also served upon the respondent. The applicant annexed copies of a letter by the applicant's advocates letter dated 16th December 2024 and emails dated 13th December 2024 and 17th December 2024 evidencing the said service upon the respondent.
4. The applicant's advocates additionally filed written submissions dated 21st July 2025 in which the above averments were reiterated, and cited various decisions of this Court, including *Leo Sila Mutiso vs Rose Hellen Wangari Mwangi* (1999) 2 EA 231, *County Government of Narok & Another vs Mwavali* (2024) KECA 390 (KLR), *Bundi vs Karani* (Civil Application E335 of 2023) [2024] KECA 847 (KLR) and *Paul Wanjohi Mathenge v. Duncan Gichane Mathenge* [2013] eKLR on the criteria that guides the exercise of the discretion under Rule 4 of the Court of Appeal Rules.
5. On the application of the said principles, the applicant's advocates submitted that the period of delay in filing the Notice of Appeal was fifteen (15) hours and thirteen (13) minutes, while the filing of the instant application was seven (7) days after the expiry of the prescribed period; the applicant's advocate has acknowledged his mistake, and the said mistake should not hinder the applicant's right of appeal; the respondent has failed to show the prejudice he would suffer should this Court allow the instant application, while the Environment and Land Court ordered that the applicant, which is a state agency fully funded by public taxes to pay the respondent the sum of Kshs 8,050,000/=; and lastly that the applicant has annexed a draft Memorandum of Appeal and has proffered various grounds of appeal that may succeed .
6. The respondent did not file any response to the application, which is therefore unopposed. I note in this regard that the applicant filed an affidavit of service sworn on 21st July 2025 by the applicant's advocate, in which it was deponed that the respondent was duly served with the instant application by email on 20th December 2024. The respondent's advocate likewise did not file any submissions on the application.
7. I heard the application in chambers in the absence of the parties on 29th July 2025, and have considered the arguments put forth by the applicant, as well as the principles that apply to an application for extension of time under Rule 4 of the Court of Appeal Rules of 2022, which have been the subject of many decisions of this Court and the Supreme Court of Kenya. In summary, the Court of Appeal confirmed in the case of *Leo Sila Mutiso vs Rose Hellen Wangare Mwangi*, (*supra*) that the decision whether or not to extend time for appealing is essentially discretionary, taking into account the length of delay and reason for the delay.



8. In the case of Nicholas Kiptoo Arap Korir Salat vs IEBC & 7 Others, Supreme Court of Kenya Application No. 16 of 2014, the Supreme Court of Kenya set down the underlying principles that a Court should consider in exercising its discretion as being:

- i. 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;
- ii. A party who seeks an extension of time has the burden of laying a basis to the satisfaction of the court;
- iii. Whether the court should exercise the discretion to extend time, is a consideration to be made on a case-to-case basis;
- iv. Whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the Court;
- v. Whether the respondents will suffer any prejudice if the extension is granted;
- vi. Whether the application has been brought without undue delay; and
- vii. Whether in certain cases, like election petitions, public interest should be a consideration for extending time."

9. The Supreme Court of Kenya also pronounced as follows in the case of Andrew Kiplagat Chemaringo vs Paul Kipkorir Kibet [2018] eKLR:

"the law does not set out any minimum or maximum period of delay. All it states is that any delay should be satisfactorily explained. A plausible and satisfactory explanation for delay is the key that unlocks the court's flow of discretionary favour. There has to be valid and clear reasons, upon which discretion can be favourably exercisable."

10. I note that the applicant filed its Notice of Appeal on 11th December 2024, one day outside the 14 days after the decision sought to be appealed against prescribed by Rule 77(2) of the Court of Appeal Rules of 2022, which lapsed on 10th December 2024. The instant application for extension of time was also filed on 17th December 2024 seven days after the said lapse. The explanation for the delay is not disputed by the respondent, nor has he demonstrated any prejudice he will suffer if the extension for time is granted .

11. I am therefore persuaded that sufficient cause for the delay in filing the Notice of Appeal has been demonstrated by the applicant, and that the delay was not inordinate. Consequently, the application dated 17th December 2024 is found to be merited, and the applicant is accordingly granted leave to file and serve a Notice of Appeal out of time against the judgment delivered on 26th November 2024 by the Environment and Land Court (D.M. Mwangi J.) in Nairobi ELC Appeal No. E064 of 2021. The applicant's Notice of Appeal dated 11th December 2024 and served upon the respondent on 13th December 2024 is accordingly deemed as having been duly filed and served. There shall be no order as to the costs of the application.

12. Orders accordingly.

DATED AND DELIVERED AT NAIROBI THIS 3RD DAY OF OCTOBER, 2025.

P. NYAMWEYA.

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JUDGE OF APPEAL

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

DEPUTY REGISTRAR

