



REPUBLIC OF KENYA



**Cytonn Investments Partners Four LLP v Mutua & another (Civil Application
E590 of 2024) [2025] KECA 1537 (KLR) (3 October 2025) (Ruling)**

Neutral citation: [2025] KECA 1537 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPLICATION E590 OF 2024
K M'INOTI, JA
OCTOBER 3, 2025**

BETWEEN

CYTONN INVESTMENTS PARTNERS FOUR LLP APPLICANT

AND

JOHN KIOKO MUTUA 1ST RESPONDENT

SERAH NZEMBI MUTUA 2ND RESPONDENT

(Application for extension of time to appeal from the ruling and order of the Environment & Land Court at Machakos (C. Ochieng, J.) dated 31st January 2024 in ELCC No. E016 of 2022)

RULING

1. On 24th May 2023, the respondents, John Kioko Mutua and Serah Nzembi Mutua, applied in the Environment & Land Court (ELC) at Machakos to strike out the applicant's (Cytonn Investments Partners Four LLP) suit on the grounds that the applicant lacked capacity to prosecute the same, having been placed under liquidation. In the alternative, the respondents applied for stay of further proceedings pending the conclusion of the liquidation proceedings.
2. By a ruling dated 31st January 2024, the ELC court agreed with the respondents and struck out the applicant's suit, but made no orders on costs.
3. The applicant was aggrieved and elected to invoke its right of appeal. Towards that end, it filed a notice of appeal on 7th February 2024, which was within the period prescribed by rule 77(2) of the [Court of Appeal Rules](#).
4. On 15th June 2024 the applicant applied for certified copies of the ruling and proceedings. This was clearly outside the 30 days prescribed by the proviso to rule 84(1) of the [Court of Appeal Rules](#), if the applicant wished to rely on a certificate of delay. The applicant collected the certified documents on 23rd October 2024 and a certificate of delay was issued to that effect.



5. Having failed to apply for certified proceedings within 30 days from the date of the impugned ruling, the applicant was required to file the record of appeal within 60 days from the date of filing the notice of appeal (See rule 84(1) of the Court of Appeal Rules). To rectify that anomaly, the applicant moved the court *vide* a Notice of Motion dated 31st October 2024 for extension of time to file the appeal.
6. The applicant explains that the delay in applying for certified copies of the relevant documents was occasioned by difficulties encountered by its new advocates in getting mapped on the e-filing portal. The applicant further submits that the application for extension has been made without delay and that the intended appeal is arguable, with great chances of success. Among the issues identified in the draft memorandum of appeal are whether the ELC erred in holding that the applicant lacked capacity to prosecute its suits; by holding that it had no jurisdiction in the matter; and by confusing the applicant with a different and separate legal entity, namely Cytonn High Yield Solutions, LLP. It is also the applicant's contention that it stands to suffer great prejudice by being inhibited from suing or being sued.
7. In addition to the above issues, the applicant filed written submissions dated 6th December 2024, in which it reiterates the same points.
8. The respondents did not respond to the application, and therefore I shall treat the same as unopposed.
9. I have carefully considered this application. The principles that shall guide me are those set out in decisions such as *Leo Sila Mutiso v. Rose Hellen Wangari Mwangi*, CA No. Nai. 255 of 1997; *Fakir Mohamed v. Joseph Mugambi & 2 Others*, CA. No. Nai 332 of 2004 and *Imperial Bank Ltd (In Receivership) & ASnother v. Alnashir Popat & 18 Others* [2018] eKLR. In the latter case the considerations in an application for extension of time were explained as follows:

“Some of the considerations to be borne in mind while considering an application for extension of time include the length of the delay involved, the reason(s) for the delay, the possible prejudice, if any, that each party stands to suffer depending on how the court exercises its discretion; the conduct of the parties; the need to balance the interests of a party who has a decision in his or her favour against the interest of a party who has a constitutionally underpinned right of appeal; the need to protect a party's opportunity to fully agitate its dispute, against the need to ensure timely resolution of disputes; the public interest issues implicated in the appeal or intended appeal; and whether, *prima facie*, the intended appeal has chances of success or is a mere frivolity.
10. I note that there is on record correspondence between the applicant's advocates and the ELC Registry where the issue of challenges encountered by the advocates in being mapped on the e-filing portal is raised. In the absence of views to the contrary, I will treat that as a good explanation for the delay in bespeaking the proceedings. The application for extension of time was made timeously, barely within seven days of the availing of the certified copies of the proceedings and ruling. From the grounds that the applicant intends to urge on appeal, I am persuaded that the intended appeal is not frivolous. I am also satisfied that the applicant stands to suffer grave prejudice if I do not grant leave and thus shut it out of its constitutionally underpinned right of appeal.
11. For the foregoing reasons, I allow the Notice of Motion dated 31st October 2024 and direct the applicant to file its appeal within twenty-one (21) days from the date of this ruling. The costs of the application shall abide the outcome of the appeal. It is so ordered.

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

K. M'INOTI



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JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR

