



REPUBLIC OF KENYA



KENYA LAW
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**Kiema v Ngutu (Civil Application E596 of 2024)
[2025] KECA 1552 (KLR) (3 October 2025) (Ruling)**

Neutral citation: [2025] KECA 1552 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPLICATION E596 OF 2024
K M'INOTI, JA
OCTOBER 3, 2025**

BETWEEN

MARGARET THAMBI KIEMA APPLICANT

AND

DAUDI MUTULE NGUTU RESPONDENT

(Application for extension of time to appeal from the judgment and decree of the Environment & Land Court at Makueni (Murigi, J.) dated 5th June 2024 in ELCC No. E156 of 2017)

RULING

1. The applicant, Margaret Thumb Kiema, seeks vide a notice of motion dated 30th September 2024, extension of time to appeal from the judgment and decree of the Environment & Land Court (ELC) at Makueni dated 5th June 2024. By that judgment, the ELC dismissed the applicant's suit in which she was seeking, among others, a declaration that she was the lawful owner of a parcel of land known as Kitengei B Settlement Scheme Adjudication No. 324.
2. The only ground put forth to explain the delay in appealing is that the applicant's former advocate failed to notify the applicant that judgment had been delivered. The applicant adds that she learned of the judgment on 10th June 2024 when she visited the court.
3. The applicant's written submissions dated 5th July 2025, are erroneously premised on section 79G of the *Civil Procedure Act* and Order 50 rule 6 of the *Civil Procedure Rules* and decisions thereon from superior courts below. Those provisions and decisions are not applicable to an application for extension of time under rule 4 of the *Court of Appeal Rules*.
4. As far as they are relevant to this application, the applicant submissions are that the delay in making the application is not inordinate; that there was delay in obtaining a copy of the judgment; that the intended appeals has high chances of success and is not frivolous; and that she stands to suffer prejudice



if the application for extension of time is not granted. In support of the submissions the applicant relies on the decisions in *Mwangi v. Kenya Airways Ltd* [2003] eKLR and *Andrew Kiplagat Chemaringo v. Paul Kipkorir Kibet* [2018] eKLR.

5. The respondent, Daudi Mutule Ngutu, opposed the application vide a replying affidavit sworn on 15th July 2025 and written submissions of even dated. The substance of the response is that the applicant has not placed before the Court material on which it can exercise discretion in her favour; that the delay in making the application is inordinate; that although the application was filed in September 2024, it was not served until July 2025; that up to now, the applicant has not even filed a notice of appeal; that the intended appeal was an afterthought and did not have any chances of success.
6. The respondent relied on the decision in *Bartilol & 3 others v. Bartilol & Another* [2024] KECA 607 (KLR) in support of the proposition that extension of time is not automatic and is only available to deserving parties. He also cited *Nicholas Kiptoo Korir Arap Salat v IEBC* [2014] eKLR and *Paul Wanjobi Mathane v. Duncan Gichane Mathenge* [2013] eKLR on the factors that guide the Court in an application for extension of time.
7. I have considered this application and submissions by the parties. Rule 4 of the *Court of Appeal Rules* confers on the Court discretionary and unfettered power to extend time if the circumstances of the case so demands. The discretion of the Court is always exercised judiciously rather than arbitrarily, based on the circumstances of each case. Some of the factors to bear in mind in such an application, as explained by the Supreme Court in *Nicholas Kiptoo Korir Arap Salat v. IEBC* (*supra*), are:

- 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 for 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...”

8. Further, this Court in *Leo Sila Mutiso v. Rose Hellen Wangari Mwangi*, CA No. Nai. 255 of 1997, identified some of the relevant considerations in an application for extension of time as follows:

“It is now 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”.

(See also *Fakir Mohamed v. Joseph Mugambi & 2 Others*, CA. No. Nai 332 of 2004 and *Imperial Bank Ltd (In Receivership) & Another v. Alnashir Popat & 18 Others* [2018] eKLR).

9. The short of the matter is that the applicant is obliged to satisfy the Court that there are good reasons why she did not prefer the appeal within the period prescribed by the rules. The applicant states that she did not prefer the appeal on time because the advocate who was on record for her did not inform her of the date of judgment, which was 5th June 2024. What is most unsatisfactory is that the said advocate’s name is not disclosed nor has he sworn an affidavit to explain the circumstances under which he failed



to communicate with the applicant, if at all that was the case. Further, the applicant does not state the efforts she made to find out the date of the judgment from her undisclosed advocate.

10. What is more, the applicant states that she learnt of the judgment on 10th June 2024 when she visited the court. That was barely 5 days after the judgment, with adequate time to file a notice of appeal. It took the applicant more than three months to make this application for extension of time, which was not served upon the respondent until another 10 months later.
11. This delay is, in the circumstances of this application inordinate and unexplained. I am not persuaded by the argument that the applicant was waiting for the judgment. A party does not require proceedings or the judgment to lodge a notice of appeal. As has been repeated time and again, a notice of appeal is a one page formal document that does not require any unusual exertion or effort to draft and file.
12. The applicant has also not demonstrated how she stands to suffer greater prejudice than the respondent.
13. For the foregoing reasons, and in particular bearing in mind the applicant's failure to satisfactorily explain the delay which

I have found to be inordinate, I decline to exercise my discretion to extend time in her favour. The result is that the notice of motion dated 30th September 2024 is hereby dismissed with costs to the respondent. 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

