



**Mwangi & 2 others v Gichina (Administrator of the Estate of the Late Hanniel Gichina Mwangi) (Civil Application E107 of 2022) [2025] KECA 1554 (KLR) (3 October 2025) (Ruling)**

Neutral citation: [2025] KECA 1554 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAIROBI  
CIVIL APPLICATION E107 OF 2022**

**DK MUSINGA, JA  
OCTOBER 3, 2025**

**BETWEEN**

**JOE MWANIKI MWANGI ..... 1<sup>ST</sup> APPLICANT  
JANE WANGARI MWANGI ..... 2<sup>ND</sup> APPLICANT  
EMMAH KABURA MWANGI ..... 3<sup>RD</sup> APPLICANT**

**AND**

**GEORGE ANTONY MWANGI GICHINA (ADMINISTRATOR OF THE ESTATE OF THE LATE HANNIEL GICHINA MWANGI) ..... RESPONDENT**

*(Being an application for extension of time to file an appeal out of time arising from the Judgment of the Environment and Land Court of Kenya at Thika (L. Gacheru, J.) dated 23rd February 2018 in ELC Appeal No. 15 of 2017)*

**RULING**

1. The applicants' notice of motion dated 21<sup>st</sup> February 2022 seeks extension of time to file an appeal out of time. The application is not opposed.
2. The judgment that gave rise to the application was delivered on 23<sup>rd</sup> February 2018. The applicant, being dissatisfied with the judgment, instructed his advocate to file an appeal and a notice of appeal was filed on 8<sup>th</sup> March 2018. Subsequently, the applicant filed an application for review of the said judgment and the ruling thereon was delivered on 26<sup>th</sup> January 2022. The learned judge held that under section 80 of the [Civil Procedure Act](#) and order 45 rule 1 of the Civil Procedure Rules, a review could not lie since an appeal had been instituted and, on that ground, the application for review was dismissed. The applicant wishes to appeal against that decision
3. It is well settled that the decision whether or not to extend the time for appealing is essentially discretionary. See *Leo Sila Mutiso v Hellen Wangari* [1989] 2EA 231. Among the factors that the Court



takes into consideration in deciding whether to grant extension of time are: the length of the delay; the reason for the delay; thirdly, the chances of the appeal succeeding if the application is granted, and fourthly, the degree of prejudice that may be occasioned to the respondent if the application is granted.

4. The judgment in Environment and Land Court (ELC) Appeal No. 51 of 2017 was delivered way back on 23<sup>rd</sup> February 2018. There is no good reason why an appeal to this Court was not instituted in good time. It appears to me that the applicant was not fully decided whether to proceed with the appeal or the application for review of the impugned judgment. A party cannot have it both ways. But even after the ruling on the application for review was delivered on 26<sup>th</sup> January 2022, it took the applicant nearly a month to file this application for extension of time. That delay has also not been explained.
5. I find that there has been inordinate delay in coming to this Court. The reason for the delay has not been sufficiently explained. For those reasons, I am not inclined to grant the orders sought. Consequently, this application is dismissed. Since the respondent did not file any response, I make no orders as to costs.

**DATED AND DELIVERED AT NAIROBI THIS 3<sup>RD</sup> DAY OF OCTOBER 2025.**

**D. K. MUSINGA, (PRESIDENT)**

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**JUDGE OF APPEAL**

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

Signed

**DEPUTY REGISTRAR.**

