**Rombosia v Murunga & 7 others (Civil Application E002 of 2025)**
**[2025] KECA 1645 (KLR) (3 October 2025) (Ruling)**

Neutral citation: [2025] KECA 1645 (KLR)

**REPUBLIC OF KENYA**

**IN THE COURT OF APPEAL AT KISUMU**

**CIVIL APPLICATION E002 OF 2025**

**HA OMONDI, JA**

**OCTOBER 3, 2025**

**BETWEEN**

**CHARLES KITUI ROMBOSIA ..... APPLICANT**

**AND**

**SILAS SIMIYU MURUNGA ..... 1ST RESPONDENT**

**PHAUSTINE NAMALWA SIMIYU ..... 2ND RESPONDENT**

**FREDRICK KUNDU WAMALWA ..... 3RD RESPONDENT**

**ZAINABU ASETI MURUNGA ..... 4TH RESPONDENT**

**SELLAH MARY AKINYI BARASA ..... 5TH RESPONDENT**

**PAUL NYONGESA MUSABI ..... 6TH RESPONDENT**

**COUNTY LAND REGISTRAR ..... 7TH RESPONDENT**

**ATTORNEY GENERAL ..... 8TH RESPONDENT**

***(Being an application for extension of time within which to file a Notice of Appeal and Record of Appeal against the judgment of the High Court of Kenya at Bungoma (Cherono, J.) dated 12th October 2023 in Case No. E015 of 2018)***

**RULING**

1. The applicant had filed a suit against the respondents challenging the acquisition of certificates of title in respect of the suit properties No. W.Bukusu/ S.Mateka/ 397 and 398, on grounds of fraud. He thus sought cancellation of the titles; return of the parcels to him; and eviction of the respondents from the said land parcel. The respondents maintained that they were the legal proprietors of the contested parcels which resulted from a subdivision. Upon considering the evidence presented, on 12th October

2023, the trial court held that the applicant had failed to prove his case to the required threshold and dismissed the suit.

2. The applicant being aggrieved by the outcome, is desirous of lodging an appeal, and explains that immediately after delivery of the judgment, counsel in conduct of the matter failed to update him on the recourse that was to be taken despite the applicant giving him instructions to proceed with lodging an appeal, file a notice of appeal and also file an application for stay of execution. He kept on checking with his counsel, so as to know the status of the matter, but it became apparent that his counsel was taking him in circles without filing and lodging an appeal. So, he opted to engage another advocate.

3. However, the statutory time within which to file a notice of appeal, record of appeal, service of letter bespeaking proceedings and service of notice of appeal and record of appeal had lapsed, yet in his view, he has a good and arguable appeal.

4. The applicant thus filed the Notice of motion dated 9th December, 2024, and supported by his affidavit of even date, seeking orders to extend time for filing of a Notice of Appeal and Record of Appeal; and also, extension time for service of the Notice of Appeal, Record of Appeal and letter bespeaking typed proceedings. He maintains that he has brought forth candid reasons for the delay in lodging of an appeal, urging that the mistakes of counsel should not be visited on a litigant, unless both are out to mislead the Court, which is not the case in this application.

5. The applicant argues that he has been seeking justice since the time his suit was dismissed in the trial court; and is not playing around with the courts' time as he immediately instructed another counsel to file this application upon realising that his previous counsel was playing mind games with him and was never ever going to file an appeal; that he had trusted his previous advocate, so whenever he was told to wait for the appeal to be filed, he believed the same. He contends that delay in filing the Notice of Appeal, Record of Appeal and service of the same as well as service of the letter bespeaking typed proceedings was occasioned by circumstances beyond his control.

6. In urging for a favourable consideration, the applicant refers to cases where the Courts have laid down various factors that have to be considered when dealing with an application for extension of time, such as the case of Paul Wanjohi Mathenge vs. Duncan Gichane Mathenge [2013] eKLR; and Sokoro Savings and Credit Co-operative Society Ltd vs. Mwamburi (Civil Application E032 of 2022) [2023] KECA 381 (KLR), where this Court allowed an extension of time following delay caused by the advocate on record. It is the applicant's averment that he has also subsequently written to the Registrar of the superior court seeking typed and certified proceedings.

7. The respondents oppose the application, and by a replying affidavit dated 27th January, 2025, sworn by Fredrick Kundu Wamalwa, the 3rd respondent, it is deposed that the Judgement was delivered on 12th October, 2023 in favour of the respondents and costs awarded thereof, in the presence of the then Counsel on record for the Plaintiff; that the 1st to 6th Defendants filed a Bill of Costs dated 24th October, 2023 which was taxed on 15th May, 2024 at Kshs.302,300/-; that subsequently, the applicant filed an application, in person, dated 19th June, 2024 seeking among others that the ruling on the bill of costs be set aside and that he be served and allowed to file a response; and there was no mention of any intended appeal.

8. This application is described as a ploy to evade paying the assessed costs now that his application was dismissed; and that the applicant has not satisfied the threshold for grant of the orders being sought and, in any case, the same is overtaken by events as the respondents have commenced the process of execution of the same.

9. Drawing from the Supreme Court's decision in the case of Nicholas Kiptoo Arap Korir Salat vs. IEBC & 7 others Application No. 16 of 2014 [2014] eKLR, which set down the guiding principles to consider in the exercise of discretion, the respondent submits that there is no basis whatsoever to favour the application; and that the present application only serves to further delay enjoyment of the fruits of the judgment.

10. Rule 79 of the Court of Appeal Rules provides that:

    1. An intended appellant shall, before or within seven days after lodging notice of appeal under rule 77, serve copies of the notice on all persons directly affected by the appeal.

    This did not happen; and the applicant seeks to salvage the situation courtesy of Rule 4 of the Court of Appeal Rules provides as follows:

> The Court may, on such terms as may be 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.

11. Evidently, under Rule 4, this Court has unfettered discretion to extend time for any step intended to be done within the period stipulated by the Rules. This was aptly set out in Paul Wanjohi Mathane vs. Duncan Gichare Mathenge [2013] eKLR this Court held thus:

> " The discretion under Rule 4 is unfettered, but it has to be exercised judiciously, not on whim, sympathy or caprice. I take not that in exercising my discretion, I ought to be guided by consideration of the factors stated in previous decisions of this Court including, but not limited to, the period of delay, the reasons for the delay, the degree of prejudice to the respondent and interested parties if the application is granted, and whether the matter raises issues of public importance."

12. Rule 4 of the Court of Appeal Rules does not provide for factors the court ought to consider in an application for extension of time but courts have devised appropriate principles to be applied in achieving a 'just' decision in the circumstances of each case. The case of Leo Sila Mutiso vs. Hellen Wangari Mwangi [1999] 2 EA 231 which is the locus classicus, laid down the parameters as follows:

> 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."

13. The applicant has attempted to explain the delay as an omission on the part of his previous lawyers; and that he acted without undue delay the moment he realised the state of his matter. It is not lost to this Court that an alleged mistake of counsel does not of itself cure a litigant's own inaction, basically because it is a litigant's case and not that of his counsel. The primary responsibility to act within the prescribed timelines under this Court's Rules rests heavily on the litigant's shoulders. Indeed, with

regard to the responsibility of the litigant to follow up their case, Waki, J.A. had this to say in Habo Agencies Limited vs. Wilfred Odhiambo Musingo [2015] eKLR:

> It is not enough for a party in litigation to simply blame the Advocates on record for all manner of transgressions in the conduct of the litigation. Courts have always emphasized that parties have a responsibility to show interest in and to follow up their cases even when they are represented by counsel."

14. In this case, judgment was delivered on 12th October 2023; the Notice of Appeal ought to have been filed within 14 (fourteen) days of the judgment. The instant application was filed on 9th December 2024, more than a year later. The applicant has not presented any letter of instruction to the previous advocate, to fortify the claim that instructions had been given nor has he demonstrated that he visited the previous advocate to follow up on his appeal – this is not contested; one year and almost three months later, a lightbulb illuminated the applicant's world; and it dawned on him that not only should he change counsel, but that he ought to pursue the appeal. Indeed, the previous advocate is no longer on record, and in his place, features another firm, but the veracity of those claims against the previous counsel remains unverified. I think what is critical at this stage is, whether reason for the delay has been adequately explained, and whether thereafter the applicant acted in a timely manner. The applicant has not presented any letter of instruction to their previous advocate, A year and two months in my view is inordinately long; and the reasons given have met and satisfied the principles set out for this Court to exercise its discretion in the applicant's favour and grant the extension.

15. On the issue as to whether or not the intended appeal has no chance of success, this Court is conscious of the fact that it is not the role of a single judge to determine the merits or otherwise of the appeal. This Court has held in the case of Athuman Nasura Juma vs. Afwa Mohammed Ramadhan [2016] eKLR:

> " ...this court has to be careful to ensure that whether the intended Appeal has merit or not, is not an issue to be determined with finality by a single Judge".

I bear in mind the afore-going principles whilst determining this application.

16. I agree with the respondents that having had the contested decision delivered in the presence of the applicant and his counsel; coupled with the post judgement activities which included filing of and taxing the bill of costs (which the applicant was aware of), the delay in bringing the instant application is inordinate and not satisfactorily explained; and the fault of the advocate storyline does not sell. I find that the Applicant has failed to meet and satisfy the principles set out for this court to exercise its discretion in his favor and grant the extension. The application is thus without merit; and is dismissed with costs to the respondent.

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

**H. A. OMONDI**

**.....**

**JUDGE OF APPEAL**

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

Signed

**DEPUTY REGISTRAR**