



**Maina & another v Karimjee & 3 others (Environment and Land Appeal E014 of 2025) [2025] KEELC 5796 (KLR) (31 July 2025) (Ruling)**

Neutral citation: [2025] KEELC 5796 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA  
ENVIRONMENT AND LAND APPEAL E014 OF 2025**

**YM ANGIMA, J  
JULY 31, 2025**

**BETWEEN**

**WINNIE NJERI MAINA ..... 1<sup>ST</sup> APPELLANT**

**MOSES MWANGI WACHIRA ..... 2<sup>ND</sup> APPELLANT**

**AND**

**MUFADHAI MOHAMED ALI KARIMJEE ..... 1<sup>ST</sup> RESPONDENT**

**ROSHAN MOHAMED ALI KARIMJEE ..... 2<sup>ND</sup> RESPONDENT**

**RASHID MOHAMED ALI KARIMJEE ..... 3<sup>RD</sup> RESPONDENT**

**ZULEKHA MOHAMED ..... 4<sup>TH</sup> RESPONDENT**

**RULING**

1. By a notice of motion dated 07.03.2025 filed pursuant to Order 51 of the Civil Procedure Rules Section 1B and 3A if the *Civil Procedure Act* (Cap 21), Order 42 Rules 1, 2, 3, 7, 14, 25, 26, Order 43 of the Civil Procedure Rules, Section 13 and Section 16A of the *Environment and Land Court Act*, Articles 50 and Article 159 of *the Constitution* of Kenya and all other enabling provisions of the law, the appellants sought the following orders;
  - a. spent
  - b. That the firm of M/S Wanjugu- Waweru & Associates Advocates be granted leave to come on record for the Appellants/Applicants in this matter.
  - c. That that the Memorandum of Appeal be admitted and deemed as duly filed on time and consequently the time to file the Record of Appeal be enlarged or extended to allow the filing and serving of the same within such time as the court shall deem fit.



- d. That this Honorable court be pleased to issue orders of stay of execution of the Ruling delivered by Honourable A. Muma delivered on 04.02.2025 at Nairobi in the Msa BPRT Case No. E 108 of 2023 Mufadhhal Mohammed Alikarimjee & 3 Others - Versus- Winnie Njeri Maina as Consolidated with Msa BPRT Case No. E 107 OF 2023 Between Mufadhhal Mohammed Alikarimjee Others Versus- Moses Mwangi Wachira respectively and any other consequential orders or decree therefrom pending the hearing and determination of this Application.
  - e. That this Honorable court be pleased to issue orders of stay of execution of the Ruling delivered by Honourable Pluma delivered on 04.02.2025 at Nairobi in MSA BPRT case No. E 108 OF 2023 Mufadhhal Mohammed Alikarimjee & 3 Others - Versus- Winnie Njeri Maina as Consolidated with Msa BPRT Case No. E 107 OF 2023 between Mufadhhal Mohammed Alikarimjee Others - Versus- Moses Mwangi Wachira respectively and any other consequential orders or decree therefrom pending the hearing and determination of the Appeal.
  - f. That costs be in the cause.
2. The application was supported by affidavits sworn by the appellants on even date. The application was based upon the grounds set out on the face of the motion. The appellants were aggrieved by the decision of the Business Premises Rent Tribunal (the Tribunal) in Msa BPRT Case No. E180 of 2023 whereby the Tribunal allowed the landlord's reference and increased the monthly rent payable.
  3. The material on record shows that the advocates for the parties filed a written consent on all the prayers sought save the prayer for extension of time to lodge an appeal out of time. The parties also agreed to file and exchange written submissions on the issue to enable the court to determine the same.
  4. The material on record shows that the respondents filed a replying affidavit sworn by the 1<sup>st</sup> respondent Mufadhhal Mohamed Ali Karimjee on 28.03.2025. The respondents contended that the appellants' intended appeal had no chance of success and that they had not satisfied the requirements for the grant of the orders sought.
  5. Although the parties were granted 7 days each to file and exchange their respective submissions on 15.05.2025, none of the parties had filed submissions by the time of preparation of the ruling.
  6. The factors to be considered in an application for extension of time to lodge an appeal out of time were summarized in the case of *Thuita Mwangi v Kenya Airways Ltd* [2005] eKLR as follows;
 

“Over the years, the Court has, of course set out guidelines on what a single Judge should consider when dealing with an application for extension of time under rule 4 of the Rules. For instance in *Leo Sila Mutiso v. Rose Hellen Wangari Mwangi*, (Civil Application No Nai 255 of 1997) (unreported), the Court expressed itself thus;

“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”
  7. The court has noted that the decision of the Tribunal was delivered on 04.02.2025 whereas the instant application was filed on or about 07.03.2025. The court does not find the delay of one month to be



lengthy or unreasonable especially where the appellants had to engage new advocates to act for them. The respondents have not demonstrated what prejudice, if any, they stand to suffer if the appeal is admitted out of time. The court takes the view that it is not necessary to consider the chances of success of the intended appeal at this stage because it may prejudice the fair hearing of the appeal which may be heard by this court.

8. In the premises, the court is satisfied that the appellants are entitled to enjoy their right of appeal against the decision of the Tribunal without causing any prejudice or miscarriage of justice to the respondents. Any prejudice or injury the respondents may suffer can be compensated by costs.
9. The upshot of the foregoing is that the court finds merit in the appellants' prayer for leave to file their intended appeal out of time. The court consequently makes the following disposal orders;
  - a. The appellants are hereby granted an extension of time to lodge an appeal out of time. The draft memorandum of appeal on record shall be deemed as duly filed upon payment of court fees.
  - b. The appellants shall file and serve their record of appeal within 45 days from the date hereof.
  - c. The appellants shall pay the respondents thrown away costs in the sum of Kshs 10,000 each.
  - d. The appeal shall be mentioned on 29.10.2025 for directions.

Orders accordingly

**RULING DATED AND SIGNED AT MOMBASA AND DELIVERED VIRTUALLY VIA MICROSOFT TEAMS ON THIS 31<sup>ST</sup> DAY OF JULY, 2025.**

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**Y. M. ANGIMA**

**JUDGE**

In the presence of:

Gillian - Court assistant

Ms. Kariuki for the appellants

Mr. Hamza for the respondents

