



**Mathai v Chiuri s/o Mathai (Environment and Land Appeal
E007 of 2021) [2025] KEELC 5658 (KLR) (31 July 2025) (Ruling)**

Neutral citation: [2025] KEELC 5658 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYERI
ENVIRONMENT AND LAND APPEAL E007 OF 2021**

**JO OLOLA, J
JULY 31, 2025**

BETWEEN

FRANCIS MUNDIA MATHAI APPLICANT

AND

CHIURI S/O MATHAI RESPONDENT

RULING

1. By the Notice of Motion dated 14th June, 2024, Francis Mundia Mathai (the Applicant) prays for an order that the Appeal be admitted out of time.
2. The application which is supported by an affidavit sworn by the Applicant is premised on the grounds:
 1. That Judgment in the lower Court was delivered on 19th November 2020;
 2. That this Appeal was filed on 22nd February 2021 there was a delay of 63 days;
 3. That the Applicant is an old man and was acting in person and did not know the timelines for the filing of the Appeal and was therefore late in instructing an Advocate to do so;
 4. That the delay in filing the Appeal is not inordinate and the same has been sufficiently explained; and
 5. That no prejudice will be suffered by the Respondent if the Appeal is admitted out of time.
3. Chiuri S/o. Mathai (the Respondent) is opposed to the application. In his Replying Affidavit sworn on 4th September, 2024, the Respondent avers that the delay in filing the Memorandum of Appeal is grossly inordinate and the reason for the same is not explained for the delay of 90 days.
4. The Respondent avers that the Appellant is his youngest brother who is well educated and that he conducted proceedings in the lower court acting in person. The Respondent further avers that the time for filing the Appeal was well explained to them by the court. The Respondent asserts that the



application has been filed more than three (3) years from the date the Appeal it intends to cure was filed. He avers further that he stands to suffer a great deal if the Applicant keeps dragging him to court on an Appeal which is incompetent.

5. I have carefully perused and considered both the application as well as the response thereto. I have similarly perused and considered the submissions placed before me by both parties.
6. The only issue before the court is whether or not the Applicant's Appeal as filed herein should be admitted out of time. Section 79G of the *Civil Procedure Act*, Cap 21 Laws of Kenya, provides as follows:

“Every appeal from a subordinate court to the High Court shall be filed within a period of thirty days from the date of the decree or order appealed against, excluding from such period any time which the lower court may certify as having been requisite for the preparation and delivery to the appellant of a copy of the decree or order.

Provided that an appeal may be admitted out of time if the appellant satisfies the court that he had good and sufficient cause for not filing the appeal in time.”

7. That being the case, extension of time is a discretionary power granted to the court. As the Supreme Court stated in the case of Nicholas Kiptoo Korir arap Salat –vs- IEBC and 7 Others (2014) eKLR;

“The underlying principles a court should consider in exercise of such discretion should include:

- a. Extension of time is not a right of any party. It is an equitable remedy that is only available to a deserving party at the discretion of the court;
 - b. A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the court;
 - c. Whether the court should exercise the discretion to extend time, is a consideration to be made on a case by case basis;
 - d. Whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the court;
 - e. Whether there will be any prejudice suffered by the respondent if the extension is granted; and
 - f. Whether the application has been brought without undue delay.”
8. In the matter herein, it is evident that judgment was delivered in Karatina ELC Case No. 32 of 2018 on 19th November 2020. Subsequently on 22nd February 2021, the Applicant lodged the Memorandum of Appeal herein dated 19th February 2021.
 9. In support of his application for extension of time, the Applicant avers that he is an old man who was acting in person in the lower court and that he did not know the timelines for filing of the Appeal and that he was therefore late in instructing an Advocate to file the Appeal.
 10. While the Applicant purports that his Appeal was filed some 63 days late, it was clear to me that the Appeal was filed as stated by the Respondent some 90 days later without the leave of the court. Again while it was true from a perusal of the record that the Applicant was acting in person in the Lower



Court, no explanation was given as to why after he managed to instruct an Advocate the Appeal was filed late without the leave of the court.

11. As it were, to grant an extension of time is a matter of discretion which ought to be exercised judiciously. The application for extension of time herein has been brought some three (3) years after the decision sought to be appealed was delivered. No proper explanation has been given for that delay.
12. From a perusal of the record, it was clear to me that the fact that the Applicant ought to have sought leave was well within the Applicant's knowledge. When he lodged the Memorandum of Appeal dated 19th February, 2021, the record herein reveals that the Applicant subsequently filed an application for stay of execution dated 3rd March, 2023. In response to the said application, the Respondent filed a Replying Affidavit sworn on 21st March, 2023 clearly pointing out that the Appeal herein was incompetent, the same having been filed outside the statutory time. On 10th November, 2023 this court dismissed the application for stay on the grounds inter alia, that there was no competent Appeal on record. It took the Applicant another seven (7) months thereafter before making the application for extension of time.
13. In the circumstances herein, I was not persuaded that this is a matter in which the court should exercise its discretion to extend time. The Applicant has been clearly indolent and the delay in bringing this application is not only inordinate but unexplained.
14. In the premises the Motion dated 14th June, 2024 has no merit. I dismiss the same with costs to the Respondent.

RULING DATED, SIGNED AND DELIVERED IN OPEN COURT AND VIRTUALLY AT MOMBASA THIS 31ST DAY OF JULY, 2025

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J.O. OLOLA

JUDGE

In the presence of:

- a. Ms. Firdaus Court Assistant.
- b. No appearance for the Appellant
- c. Mr. Kebuka Wachira Advocate for the Respondent

