



REPUBLIC OF KENYA



KENYA LAW
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County Government of Laikipia v Ngugi & another (Civil Application E104 of 2025) [2025] KECA 1686 (KLR) (24 October 2025) (Ruling)

Neutral citation: [2025] KECA 1686 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NYERI
CIVIL APPLICATION E104 OF 2025
S OLE KANTAI, JA
OCTOBER 24, 2025**

BETWEEN

COUNTY GOVERNMENT OF LAIKIPIA APPLICANT

AND

PN GICHOHO NGUGI 1ST RESPONDENT

JACK M MBUGUA 2ND RESPONDENT

(An application for extension of time to file a Notice of Appeal out of time against the Judgment of the High Court of Kenya at Nanyuki (Kasango, J.) delivered on 14th December, 2017 in H.C. Civil Case No. 39 of 2007.)

RULING

RULING

1. I am asked in the Motion on Notice brought under rule 4 of the Court of Appeal Rules amongst other provisions of law to be pleased to extend time and grant leave to the applicant to file and serve a notice of appeal out of time against the judgment in Nanyuki HCCC No. 39 of 2007 delivered on 14th December, 2017; that I extend time to file an appeal. In grounds in support of the application and in the supporting affidavits of Joseph Mwangi (a lawyer) and Ekwam Nabos (Chief Executive Committee Member, Lands and Infrastructure of the applicant) it is stated that the applicant, County Government of Laikipia had lodged an appeal on 21st December, 2017 and served upon the respondents advocates on 12th January, 2018; that an appeal was lodged to this Court on 4th April, 2019 being Civil Appeal No. 62 of 2019; that the appeal was struck out on 23rd May, 2025 for want of compliance under rule 86 of the Court of Appeal Rules; that the applicant has moved this Court timeously and without delay after the appeal was struck out; that there was a delay in availing typed proceedings as explained in a Certificate of Delay; that the applicant has a good appeal with high prospects of success; that the substratum of the appeal is a monetary claim which was made by the 1st



respondent against the applicant for survey fees which the applicant contends were not rendered as per the law and that it would be in the public interest that the appeal be heard on the merit. It is stated in addition that the High Court awarded the 1st respondent Kshs.11,532,909 20 against the applicant for survey fees allegedly conducted under instructions of the defunct County Council of Laikipia; that out of inadvertence the letter bespeaking proceedings was not served on the lawyers on the other side; that proceedings whose typing was delayed, were eventually ready for collection on 6th February, 2019 as per Certificate of Delay; an appeal was lodged on 2nd April, 2019 which was within 60 days from the date proceedings were availed; that the applicant was diligent in the way it handled the matter.

2. According to Mr. Ekwam Nabos no survey work was rendered to the defunct Laikipia County Council by the respondent; that the property which the 1st respondent purported to survey did not belong to that Council and was not identifiable; that the 2nd respondent who was clerk of the Council acted ultra vires while purporting to appoint the 1st respondent to carry out survey work.
3. In a replying affidavit the 1st respondent P.N. Gichoho says that there is inordinate delay of over 7 years in filing and serving notice of appeal and record of appeal which delay has not been explained; that filing of the appeal which was struck out did not stop running of time; that there is no arguable appeal; that he rendered legitimate services to the applicant's predecessor and is entitled to his fees; there should be an end to litigation; that the applicant has been indolent; that he is prejudiced by delay in ending litigation.
4. I have seen and considered submissions made by the applicant and the 1st respondent.
5. The principles that apply in an application like this one were well set out in the oft-cited case of Leo Sila Mutiso vs. Rose Hellen Wangari Mwangi Civil Application No. NAI 255 of 1997 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 stated 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.”
6. The applicant says that it filed an appeal within time but that the appeal was struck out on application by the 1st respondent after the applicant failed to serve the letter bespeaking proceedings as required by the rules of this Court. I have seen the ruling delivered
7. on 23rd May, 2025 where the appeal was struck out for that reason. The application before me is dated 17th July, 2025, less than 2 months after that ruling. It is therefore not correct as contended by the 1st respondent that there has been a delay of “over 7 years.” Time is not computed that way; the applicant is entitled in law to start the whole appeal process afresh after its appeal was struck out in circumstances enumerated in that ruling. So there is no inordinate delay, and the slight delay is reasonable.
8. The applicant says that the 1st respondent was awarded a colossal sum of money for services which the applicant contends were not rendered. I take the view that there are chances of the appeal succeeding.
9. The 1st respondent has waited for a while after judgment was given in his favour. I do not think he will be unduly prejudiced if he waited a little longer.
10. I find merit in the application and I allow it. Let Notice of Appeal be lodged within fourteen (14) days of today and record of appeal within fourteen (14) days thereafter. Costs of the Motion will be in the appeal.



DATED AND DELIVERED AT NYERI THIS 24TH DAY OF OCTOBER, 2025.

S. ole KANTAI

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JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed

Deputy Registrar

