



REPUBLIC OF KENYA



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**County Government of Meru v Kaburu t/a Mwirigi Kaburu & Company Advocates
(Civil Application E120 of 2025) [2025] KECA 1689 (KLR) (24 October 2025) (Ruling)**

Neutral citation: [2025] KECA 1689 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NYERI
CIVIL APPLICATION E120 OF 2025
K M'INOTI, JA
OCTOBER 24, 2025**

BETWEEN

COUNTY GOVERNMENT OF MERU APPLICANT

AND

**JOSEPH MWIRIGI KABURU T/A MWIRIGI KABURU & COMPANY
ADVOCATES RESPONDENT**

(Application for extension of time to appeal from the ruling and order of the Environment and Land Court at Meru (Nzili, J.) dated 26th June 2024 in ELC Misc. App. No. E016 of 2024)

RULING

1. The notice of motion before me is one of those untenable omnibus applications where an applicant presents in the same application prayers that can only be granted by a single judge, together with prayers that are exclusively the remit of the full Court. The Court has decried this practice of requiring it to hear applications in instalments and advised parties that where relief that can be granted by the full Court is conditional upon first obtaining relief from a single judge, the parties must approach the single judge first and only come to the full Court thereafter. (See *Associated Construction Co. (K) Ltd v Kyamu Construction & Engineering Ltd* [2022] KECA 872 (KLR) and *Mucwa v Makembo & 3 Others* [2022] KECA 1006 (KLR)). It is the high time counsel and parties paid regard to this advice to obviate waste of time and incurring of unnecessary costs.
2. In the present application, the applicant, Meru County Government, seeks four different reliefs. The first is extension of time to appeal from the ruling and order of the Environment and Land Court (ELC) at Meru (Nzili, J.) dated 26th June 2024. Under rule 55(1) of the *Court of Appeal Rules* (the Rules), such an application is heard and determined by a single judge. The applicant also prays for leave to appeal, an order of stay of execution, and an order of stay of further proceedings. Under rule 55(2) of the *Rules*, applications for such reliefs must be heard and determined by the full Court.



3. In light of the foregoing, I am restricted by the law to consider only the prayer for extension of time. Depending on the outcome of the application for the said prayer, the applicant must approach the full Court properly for the other reliefs.
4. The brief background to the application is as follows. The respondent acted for the applicant in ELCC No. 027 of 2021. After termination of instructions before the hearing of the suit, the respondent filed an Advocate-Client Bill of Costs which the taxing officer taxed at Ksh 82,176,731 on 26th February 2024, based on what he found to be the pleaded value of the subject matter.
5. The applicant was aggrieved and made a reference under rule 11(2) of the *Advocates (Remuneration) Order* (the Order), to the ELC on 19th March 2024. After considering the reference, the ELC found no merit in the same and dismissed it on 26th June 2024.
6. The applicant then filed a notice of appeal and applied for certified copies of the ruling and proceedings, evincing intention to appeal to this Court. However, the applicant did not apply to the ELC for leave to appeal within the time prescribed by rule 11 of the *Order*. That application was made belatedly on 29th January 2025 and dismissed by the ELC on 4th March 2025.
7. The applicant's next port of call was this Court in the present application dated 4th July 2025, in which, as I have earlier pointed out, he seeks extension of time to appeal against the ruling and order of the ELC dismissing the reference. The applicant has deposed that its previous advocates, Messrs. Kaumbi & Company Advocates, filed a notice of appeal and applied for certified copies of proceedings on 10th July 2024 without first seeking leave to appeal from the ELC. It is further deposed that the failure to apply for leave was due to a mistake by the former counsel, which should not be visited on the applicant.
8. In its submissions dated 4th September 2025, the applicant contends that under rule 4, this Court has discretion to extend the time limited by the Rules, its decision or that of a superior court like the ELC. The applicant cited the decision of this Court in *Leo Sila Mutiso v Helen Wangari Mwangi* [1999] 2 EA [1999] EA 231 on the principles that apply in an application for extension of time.
9. It was submitted that the delay in this matter is adequately explained as one occasioned by mistake of the previous counsel on record who failed to apply to the ELC for leave to appeal within the time prescribed by rule 11(3) of the *Order*, or for extension of time. The applicant urged that it was not aware of the lapses on the part of its previous counsel and only learned of the situation later, and promptly applied for leave before the ELC, which was declined on 4th March 2025. The applicant cited *Lucy Bosire v Kebanicha Division Land Disputes Tribunal & 2 Others* [2013] eKLR in support of the proposition that blunders by counsel should not stand in the way justice.
10. The applicant further submitted that it had in recent times undergone serious political upheavals which, among others, affected its internal organisation and work. The upheavals necessitated the reconstitution of its legal department, which in turn impinging on its ability to quickly and seamlessly follow up on its court cases.
11. As regards whether the intended appeal is arguable or whether it is frivolous, the applicant submitted that the respondent's Advocate-Client Bill of Costs was taxed at a manifestly excessive amount of Kshs. 82,176,731 which was indicative of an error of principle in taxation deserving the consideration of this Court. The applicant also relied on its draft memorandum of appeal in which it has tabulated a number of grounds, among them disregard of its submissions. The applicant cited the judgment of the Supreme Court in *Kenya Airports Authority v Otieno Ragot & Company Advocates* [2024] KESC 44 (KLR) and submitted that the award of costs in this case needs to be reconsidered.



12. Lastly, on prejudice and public interest, the applicant submitted once more that the sum of Kshs. 82,176,731 awarded to the respondent was colossal and manifestly excessive, particularly taking into account the fact that the suit is yet to be heard in the ELC. It was further contended that the amount would have to be paid from public funds and that it was in public interest that the applicant be given an opportunity to challenge that award before this Court.
13. The applicant further contends that the respondent is hellbent on executing the awarded costs having obtained, in quick succession, an order for mandamus to compel it to pay the costs, and an order holding the applicant in contempt of court for failure to pay the awarded costs.
14. The respondent, opposed the application vide a replying affidavit sworn by Mwirigi Kaburu, advocate, on 8th October 2025 and a notice of preliminary objection dated the same day. The respondent addressed all the prayers in the applicant's application, but as I have already indicated, I can only deal with the prayer for extension of time and accordingly, I shall not delve into the response in so far as it addresses issues reserved for the full court.
15. As regards extension of time, the respondent submitted that the application now before the Court is incompetent because it was filed during the Court's recess without a prayer for hearing during recess. Further, that the delay involved is inordinate, because the applicant filed the present application in August 2025, more than one year from 26th June 2024 when the ELC dismissed its reference on taxation. The respondent argued that a delay of more than one year was inordinate and had not been adequately explained because the applicant's remedy lay against his former advocates, who had not owned up to any mistake in failing to apply for leave.
16. As regards the preliminary objection, its kernel is that under rule 11(3) of the *order*, the applicant cannot appeal to this Court without leave from the ELC, and having unsuccessfully applied for leave from the ELC, the applicant cannot apply for leave from this Court. It follows, in the respondent's view, that if the applicant has no right of appeal to this Court, then it serves no purposes to grant its prayer for extension of time to apply for leave to appeal. In support the respondent relied on the ruling of this Court in *Kenya County Government Workers Union v Mbuvi t/a Katunga Mbuvi & Co. Advocates* [2023] KECA 525 (KLR).
17. It was also the respondent's submission, based on the decision of the Supreme Court in *Macharia v Kenya Commercial Bank Ltd & 2 Others* [2012] KESC 8 (KLR), that a right of appeal is conferred by the *Constitution* or statute and that such a right cannot be inferred. It was the respondent's categorical view that in the circumstances of the present application, the applicant has no right of appeal to this Court.
18. I have carefully considered this application. To the extent that the preliminary objection raises a jurisdictional issue, namely that the applicant has no right of appeal, I must determine it first before delving into the merits of the application for extension of time.
19. Rule 11 of the *Order* provides as follows:
 - “ 11. Objection to decision on taxation and appeal to Court of Appeal
 1. Should any party object to the decision of the taxing officer, he may within fourteen days after the decision give notice in writing to the taxing officer of the items of taxation to which he objects.
 2. The taxing officer shall forthwith record and forward to the objector the reasons for his decision on those items and the



objector may within fourteen days from the receipt of the reasons apply to a judge by chamber summons, which shall be served on all the parties concerned, setting out the grounds of his objection.

3. Any person aggrieved by the decision of the judge upon any objection referred to such judge under subsection (2) may, with the leave of the judge but not otherwise, appeal to the Court of Appeal.
 4. The High Court shall have power in its discretion by order to enlarge the time fixed by subparagraph (1) or subparagraph (2) for the taking of any step; application for such an order may be made by chamber summons upon giving to every other interested party not less than three clear days' notice in writing or as the Court may direct, and may be so made notwithstanding that the time sought to be enlarged may have already expired.
20. For the purposes of the present application, the most relevant provision of rule 11 is sub rule 3 which makes an appeal from the decision of a judge on a reference conditional upon the aggrieved party obtaining leave. If leave is not obtained, an aggrieved party cannot appeal to this Court from a reference. That is crystal clear. The issue raised in this application is, however, a different issue. Does denial of leave to appeal by the superior court below close all doors to an aggrieved party or can such a party obtain leave to appeal from this Court?
21. The respondent reads rule 11(3) literally and strictly to mean that without leave from the superior court below, the applicant has no right of appeal to this Court. He understands the words "but not otherwise" to mean that leave must be obtained and obtained only from the superior court below and not from this Court.
22. In my view, that is too a strict and restrictive reading of the provision. Rule I creates a statutory right of appeal from a decision of a judge in a reference, so long as the aggrieved party obtains leave. I understand the provision to mean that a party cannot appeal from a reference to this Court without leave, but it does not bar an aggrieved party from applying in this Court for leave to appeal. I take that view for two main reasons.
23. The first is that the right to access justice, including appellate justice, is underpinned by Article 48 of the Constitution and cannot be taken away or denied except in the clearest of terms, in a statute or the Constitution. Additionally, Article 159(1) (e) of the Constitution directs the Judiciary to protect and promote the purpose and principles of the Constitution, such as access to justice. Also relevant is Article 259 (1) of the Constitution which requires a provision in the Constitution to be interpreted in a manner that, among others, promotes the purposes, values and principles of the Constitution and advances the rule of law and the human rights and fundamental freedoms in the Bill of Rights. Faced with a provision that is capable of bearing two interpretations, I would opt for the interpretation that advances the right to access justice.
24. The second reason is found in rule 41 of the Rules. That rule provides as follows:
1. In a civil matter—
 - a. where an appeal lies with the leave of the superior court, application for such leave may be made—



- i. informally at the time when the decision against which it is desired to appeal is given; or
 - ii. by motion or chamber summons according to the practice of the superior court, within fourteen days of such decision;
 - b. where an appeal lies with the leave of the Court, application for such leave shall be made—
 - i. in the manner laid down in rules 44 and 45 within fourteen days after the decision against which it is desired to appeal; or
 - iii. where application for leave to appeal has been made to the superior court and refused, within fourteen days after such refusal.
25. That rule provides the procedure to be employed in two distinct scenarios. The first scenario is where an appeal lies to this Court with leave of a superior court like the ELC. In such a case, the application for leave may be made informally when the decision against which it is intended to appeal is made, or by formal application within 14 days from the date on which the decision is made. The second scenario is where an appeal lies with leave of this Court. In such a case, an aggrieved party may apply to this Court for leave to appeal by a formal application within 14 days from the date of the decision of the superior court, or, where, as in he present case, an application for leave to appeal has first been made to the superior court and refused, within 14 days of such refusal.
26. What would be the legislative purpose of rule 41 (1) (b) (ii) if, leave to appeal to this Court cannot be granted by the Court itself once a superior court has denied an aggrieved party leave to appeal? I would eschew any interpretation of rule 41(1) (b) (ii) which would render that provision utterly superfluous.
27. The decision of this Court in *Kenya County Government Workers Union v Mbuvi t/a Katunga Mbuvi & Co. Advocates* (supra) which the respondent relies on is not an authority for the argument advanced in this application. That case involved a party who had filed a notice of appeal without first applying for leave to appeal under rule 11(3) of the *Order*. On the basis of that notice of appeal, the party applied for stay of execution. The Court held that in so far as a notice of appeal is jurisdictional and the party in question had not applied and obtained leave to appeal, there was no valid notice of appeal on record on the basis of which the Court could entertain an application for stay of execution.
28. In the matter before me, the issue is entirely different, namely whether a party whose application for leave to appeal has been dismissed by a superior court below is precluded from seeking leave to appeal in this Court, and thereby barred from seeking extension of time to apply in this Court for leave to appeal.
29. For the foregoing reasons, I am not persuaded of the merits of the respondent’s preliminary objection, attractive as it may look at first sight, and I decline to sustain it.
30. Moving on to the merits of the appeal, I do not think there is any substance in the respondent’s objection that the application before me is faulty for failure to contain a prayer for hearing during the recess. While it is true that the application may have been filed during the Court recess, I am not hearing the application during the recess. Such a prayer, even if it had been made, would have been overtaken by events and would not in any case affect the Court’s jurisdiction to hear and determine the application.
31. Under rule 4 of the Rules, the Court has unfettered discretion to extend time. That discretion, however, like all other discretions, must be exercised judiciously and upon reason rather than arbitrarily and upon whim. A party like the applicant who seeks extension of time bears the onus of justifying



extension. In *Nicholas Kiptoo Arap Korir Salat v IEBC & 7 Others* [2014] eKLR, the Supreme Court held, among other that:

- i. Extension of time is not a right of a party. It is an equitable remedy that is only available to a deserving party at the discretion of the court.
- ii. A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the court.
- iii. Whether the court should exercise the discretion to extend time, is a consideration to be made on a case to case basis...”

32. The factors that guide the Court in extension of time were well set out in *Leo Sila Mutiso v Helen Wangari Mwangi* (supra) and they include, the period of delay; the reasons or the explanation for the delay; the conduct of the parties; the prejudice that each of the parties stands to suffer; the balance between the rights of a party who has a judgment in its favour against the right of a party to pursue an appeal; the public interest issues implicated in the appeal; and whether, on *prima facie* basis, the intended appeal raises bona fide issues or is a mere frivolity.

33. The ELC dismissed the applicant’s objection to the Bill of Costs on 26th June 2024. By dint of rule 41(1) (a) of the *Rules*, the application for leave ought to have been made informally when the objection was refused or formally within 14 days from 26th June 2024. That did not happen until 29th January 2025 when the applicant applied for leave before the superior court. That application was dismissed on 4th March 2025 and the applicant ultimately filed this application dated 4th July 2025. The period between the dismissal by the ELC of the application for leave to appeal and the filing of the application now before me is about four months, which is clearly inordinate, given that under the rules such an application is required to be made within 14 days of the refusal of leave by the superior court.

34. But has been stated time and again, a period of delay may on the face of it look inordinate, but the critical question is whether that delay has been adequately explained. The applicant’s explanation for delay is two fold, namely, that its former advocates committed a blunder by failing to apply for leave to appeal before the ELC as required by rule 11(3) of the Order, and the political upheavals that led to reconstitution of its legal department, impinging on its ability diligently follow up on its pending court cases. The record also shows that both parties have been bogged down in the ELC in applications for mandamus, contempt of court, and the dismissed application for leave to appeal.

35. An advocate of reasonable competence would have known that leave to appeal was required before appealing to this Court from a decision of the ELC in a reference. However, the mere fact that a blunder has been caused by an advocate who should have known better is not of and by itself a sufficient reason to grant extension of time. It was those kind of blunders that Madan JA (as he then was), eloquently spoke to in *Belinda Murai & 9 others v Amos Wainaina*, CA. No. Nai. 9 of 1978:

“A mistake is a mistake. It is no less a mistake because it is an unfortunate slip. It is no less pardonable because it is committed by senior counsel though in the case of a junior counsel the court might feel compassionate more readily. A blunder on a point of law can be a mistake. The door of justice is not closed because a mistake has been made by a person of experience who ought to have known better. The court may not forgive or condone it but it ought certainly to do whatever is necessary to rectify it if the interests of justice so dictate. It is known that courts of justice themselves make mistakes which is politely referred to as erring, in their interpretation of laws and adoption of a legal point of view which courts of appeal sometimes overrule. It is also not unknown for a final court of appeal to reverse



itself when wisdom accumulated over the course of years since the decision was delivered so requires. It is all done in the interests of justice.” (Emphasis added).

36. As for the applicant’s political upheavals, the spirited attempts to impeach the former Governor, which failed twice but were ultimately successful in the third attempt, are all matters in the public domain. The impeachment led to change in the applicants leadership and the reorganisation that the applicant speaks to, which I am persuaded are relevant considerations in evaluating the delay and the reasons therefor.
37. As regards the possible merits of the intended appeal, the issues of whether there is an error of principle apparent in what the applicant considers a manifestly excessive award is certainly an issue worthy of full consideration by the Court. In *Kenya Airports Authority v Otiemo Ragot & Company Advocates* (*supra*), the Supreme Court reiterated that the overall objective of the Order is to ensure that the fees or costs paid to party are reasonable and to maintain the standards of the legal profession. The Order further seeks to prevent exploitation of parties to a suit or transaction with regard to remuneration of advocates and compensation of costs or expenses incurred by a successful party. To determine what amounts to reasonable costs can only be determined on a case-by-case basis. On the basis of those principles I am persuaded that the intended appeal is not frivolous.
38. As for prejudice and public interest, I bear in mind the fact that the amounts in dispute are to be borne by a County Government implicates great public interest which justifies and opportunity for the applicant to urge its appeal.
39. In this case, I would take the approach adopted by Lakha, JA in *Tononoka Steels Ltd v The PTA Bank*, CA No. 295 of 1998:
when he stated:
“Broadly speaking, my view of the matter is that unless there is fraud, intention to overreach, inordinate delay or such other circumstances disentitling a party to the exercise of the Court’s discretion, the Court should, in so far as it may be reasonable, prefer, in the wider interests of justice, to have a case determined on its merits.”
40. For the foregoing reasons, I allow the application dated 4th July 2025 and grant the applicant extension of time to apply before the Court of Appeal for leave to appeal against the ruling of the ELC dated 26th June 2024. The application shall be filled and served within fourteen (14) days from the date of this ruling. Costs of the application shall abide the outcome of the intended appeal. It is so ordered.

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

K. M’INOTI

.....

JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

