



Gitunga (Suing as the Legal Representative of Itunga Kiragua alias M'itonga Kiragua) & 6 others v Mbataru & another (Civil Application E108 of 2025) [2025] KECA 1691 (KLR) (24 October 2025) (Ruling)

Neutral citation: [2025] KECA 1691 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NYERI
CIVIL APPLICATION E108 OF 2025
S OLE KANTAI, JA
OCTOBER 24, 2025**

BETWEEN

**JUDSON MWENDA GITUNGA (SUING AS THE LEGAL REPRESENTATIVE OF ITUNGA KIRAGUA ALIAS M'ITONGA KIRAGUA) 1ST APPLICANT
GITUNGA KIENDE ESTHER 2ND APPLICANT
JAMLICK KABURU GITUNGA 3RD APPLICANT
JOYCE NDURU M'RUKARIA 4TH APPLICANT
HELLEN NKUENE WILFRED GITUNGA 5TH APPLICANT
ESTHER MUGURE JOHN 6TH APPLICANT
FAITH KATHUE MURITHI 7TH APPLICANT**

AND

**JUIUS MBATARU 1ST RESPONDENT
GEORGE GITONGA GITU (SUING AS THE LEGAL REPRESENTATIVE OF RIRIA KARAGUA ALIAS FESTUS GIITU KIRAGUA (DECEASED) 2ND RESPONDENT**

(An application for extension of time to file a Notice of Appeal and Record of Appeal out of time from the Judgment of the Environment and Land Court at Meru (C. K. Yano, J.) dated 23rd November, 2020 in E.L.C. Suit No. E003 of 2022)

RULING

1. Although various provisions of law are cited in the Motion on Notice brought by the applicants Judson Mwenda Gitunga (Suing as the Legal Representative of Itunga Kiragua alias M'itonga Kiragua) & 6



Others I note from the prayers that the only part of the Motion that I can deal with as a single Judge is prayer 2:

That this Honourable Court be pleased to grant leave to the Applicants to file a Notice of Appeal and Record of Appeal out of time.”

2. It is stated in grounds in support of the Motion and in a supporting affidavit of the 1st applicant Judson Mwenda Gitonga that the 1st respondent instituted Meru ELC No. E003 of 2022 against the applicants which suit was heard and determined in favour of the 1st respondent in a judgment delivered on 23rd November, 2023; that being dissatisfied with the outcome the applicants instructed counsel to appeal – a notice of appeal was filed on 5th December, 2023 and a request for proceedings and judgment made and those documents were served on counsel for the respondents; that service of notice of appeal was acknowledged but there was no stamp on the letter bespeaking proceedings; that typing of proceedings took time until they were ready and collected on 30th May, 2024; a Certificate of Delay was issued on 23rd July, 2024 and Record of Appeal was filed on 30th July, 2024 which was within 60 days from the date proceedings were certified as ready for collection. Further, that the respondents filed an application dated 29th August, 2024 for striking out the appeal for failure to comply with strict timelines and being filed out of time it being stated in the application that the letter bespeaking proceedings had not been copied or served on the respondents; that this Court in a ruling delivered on 18th July, 2025 struck out Record of Appeal holding that the applicants should first have sought leave to file such Record out of time. The applicants say that they have always demonstrated readiness to pursue an appeal as shown by the fact that notice of appeal was filed and served within the set timelines; that there is an arguable appeal; that the application has been brought without inordinate delay. Several documents are attached to the application.
3. The 1st respondent Julius Mbataru in a replying affidavit says that the application is incompetent, scandalous, frivolous and an abuse of the process; that appeal had been filed by the applicants without following procedure; that the applicants did not serve letter bespeaking proceedings; that there is inordinate delay in bringing the application. There are various documents attached to the application including our ruling in Civil Appeal (Application) No. E143 of 2024.
4. Rule 4 of the Court of Appeal Rules dealing with extension of time provides that:
 4. 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.”
5. In *Leo Sila Mutiso vs. Rose Hellen Wangari Mwangi* Civil Application No. NAI 255 of 1997 that rule was interpreted to mean:

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 applicants here say that after judgment was delivered by the Environment and Land Court they filed and served a notice of appeal on time. They also applied for copies of proceedings and judgment



to enable them compile and lodge a Record of Appeal. They alleged to have served a copy of that letter on the respondents but that fact was denied and this Court found in the ruling delivered on 18th July, 2020 (amongst other findings) that the applicants were not entitled to rely on the proviso to rule 84 of our rules in those circumstances.

7. I note that the applicants moved this Court for extension of time by the application dated 23rd July, 2025, less than a week after the ruling was delivered. So there is no delay and the circumstances leading to striking out of Record of Appeal are properly explained.
8. There is explanation for delay.
9. The applicants say that there is possibility of the appeal succeeding. I am prepared to go along with that.
10. The applicants have a right of appeal and exercising that right cannot prejudice the respondents in the circumstances.
11. I exercise discretion in favour of the applicants and allow that part of the application praying for extension of time as prayed. Let the applicant lodge a Notice of Appeal within fourteen (14) days of today and lodge Record of Appeal 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

.....

JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

