



**Kiarie v Karai Farmers Cooperative Society Ltd & another (Civil Appeal
(Application) E006 of 2025) [2025] KECA 1796 (KLR) (31 October 2025) (Ruling)**

Neutral citation: [2025] KECA 1796 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAKURU
CIVIL APPEAL (APPLICATION) E006 OF 2025
MA WARSAME, JA
OCTOBER 31, 2025**

BETWEEN

LEAH NYAMBURA KIARIE APPLICANT

AND

KARAI FARMERS COOPERATIVE SOCIETY LTD 1ST RESPONDENT

**PETER SANKALE KITASHORI (SUED AS THE LEGAL REPRESENTATIVE OF
THE ESTATE OF GEOFFREY KAHU KARANJA) 2ND RESPONDENT**

*(An application for extension of time to file a notice of appeal out of time
against the judgment of the High Court at Nakuru (Hon. Justice A.O.Ombwayo)
delivered on the 16th of October, 2024 in Nakuru ELC No.81 of 2019)*

RULING

1. Following the death of the 2nd respondent (Geoffrey Kahiu Karanja), an application was filed seeking substitution. In a ruling delivered on 7th March 2024, the learned judge found that the suit had abated against the 2nd respondent and was struck out against the 1st respondent, which had been wound up. The court, applying the doctrine of functus officio, held that once proceedings are finally concluded, the court cannot review or vary its decision.
2. Following this ruling, the applicant filed an application dated 20th March 2024 seeking to revive the suit. This application was dismissed by a ruling delivered on 16th October 2024, which is now the subject of the intended appeal. In that ruling, the learned judge held that the application which had been filed seeking revival did not qualify as review or appeal of the court's ruling delivered on 7th March 2024, and that determining the application would be akin to sitting in its own appeal. The court reiterated that by virtue of the ruling delivered on 7th March 2024, the court had become functus officio. The court consequently found the application devoid of merit and dismissed it with costs to the respondent.



3. The applicant, being dissatisfied with the ruling of 16th October 2024, now seeks to appeal against it. However, the notice of appeal filed on 6th November 2024 was out of time, necessitating the instant application dated 17th January 2025 for extension of time under Rule 4 of the Court of Appeal Rules.
4. The reasons for the delay as stated on the face of the application and supporting affidavit are that:
 - a. The ruling was scheduled for delivery on 17th October 2024;
 - b. The ruling was delivered a day earlier on 16th October 2024 without notice to the parties;
 - c. The applicant only discovered this on 4th November 2024 when she received a copy of the ruling;
 - d. Neither the advocates for the applicant nor the respondent attended court as no notice of the earlier ruling date had been communicated.
5. In support of these contentions, the applicant has annexed a diary entry purportedly showing the scheduled ruling date of 17th October 2024.
6. The 2nd respondent has filed a comprehensive replying affidavit dated 12th February 2025 opposing this application. According to the respondent: a ruling date was reserved for 17th October 2024 to be delivered electronically and the ruling was indeed delivered electronically on 17th October 2024 at 3:41:38 PM to both counsel through the court's portal system; that the ruling was signed on 16th October 2024 but delivered electronically on 17th October 2024 and that no good reason has been advanced about why the notice of appeal was not filed timeously.
7. The principles governing applications for extension of time are well settled. As stated in *Abdul Aziz Ngoma vs. Mungai Mathayo* [1976] eKLR, this Court's discretion to extend time under rule 4 only comes into existence after 'sufficient reason' for extending time has been established and it is only then that other considerations such as the absence of any prejudice and the prospects or otherwise of success in the appeal can be considered.
8. As further elaborated in *Fakir Mohamed vs. Joseph Mugambi & two Others*, Civil Application No. Nai. 332/04, the exercise of this Court's discretion under rule 4 is unfettered, and there is no limit to the number of factors the court would consider so long as they are relevant. The period of delay, the reason for the delay, the chances of the appeal succeeding if the application is granted, the degree of prejudice to the respondent if the application is granted, the effect of the delay on public administration, the importance of compliance with time limits, and the resources of the parties are all relevant factors to be considered.
9. I have considered the application, the arguments advanced by both parties and the principles considered in applications such as this. In my view, the applicant has failed to demonstrate sufficient reason for the delay. First, the applicant has not produced any evidence from the court's registry or system to verify when the ruling was actually delivered, the last page of the ruling which would show the date of delivery is conveniently missing in his affidavit and he has failed to explain how he came to know of the delivery of the ruling. Again, the diary entry annexed merely shows what was subjectively scheduled according to the applicant, not what actually transpired.
10. Even accepting the applicant's version of events at face value, there remains the critical issue of the unexplained delay from 6th November 2024 (when the notice was filed) to 17th January 2025 (when this application was filed), a period of over 70 days. The applicant has provided no explanation whatsoever for why it took over two months to seek regularization of the allegedly late notice. As this



Court emphasized in *Nicholas Kiptoo Arap Korir Salat v IEBC & 6 Others* [2013] eKLR, the applicant must account for each day of delay. The applicant has woefully failed to do so.

11. Furthermore, I am not convinced that the intended appeal will be successful. the applicant has not attached a memorandum of appeal laying out the grounds opposing the ruling of 16th October 2024 which was anchored on the doctrine of *functus officio*; that once the court delivered its ruling on 7th March 2024 finding that the suit had abated and been struck out, the court exhausted its jurisdiction and could not revisit the matter through a fresh application seeking revival.
12. Taking all factors into consideration, I find that the applicant has failed to demonstrate sufficient reason for the extension of time. The explanation proffered, that the ruling was delivered without notice remains unsubstantiated and cannot justify the wholesale abandonment of the requirement to act with diligence once the notice of appeal was filed. The applicant has failed to demonstrate the due diligence expected of a careful litigant. Coupled with the unlikely prospects of success on appeal and the complete failure to account for the 70 day delay in filing this application, the balance tilts decisively against granting the extension sought.
13. In the circumstances, the application dated 17th January 2025 is hereby dismissed with costs to the 2nd Respondent.

DATED AND DELIVERED AT NAKURU THIS 31ST DAY OF OCTOBER, 2025.

M. WARSAME

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JUDGE OF APPEAL

I certify that this is a true copy of the original.

Signed

DEPUTY REGISTRAR

