



**Kamau & 8 others v Nanga Kihoto Naivasha Limited & 2 others (Civil Appeal (Application) E028 of 2025) [2025] KECA 1800 (KLR) (31 October 2025) (Ruling)**

Neutral citation: [2025] KECA 1800 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAKURU  
CIVIL APPEAL (APPLICATION) E028 OF 2025  
MA WARSAME, JA  
OCTOBER 31, 2025**

**BETWEEN**

**DANSON KARANJA KAMAU & 8 OTHERS ..... APPLICANT**

**AND**

**NANGA KIHOTO NAIVASHA LIMITED ..... 1<sup>ST</sup> RESPONDENT**

**SAMUEL MWAGANU THUKU ..... 2<sup>ND</sup> RESPONDENT**

**THE REGISTRAR OF COMPANIES ..... 3<sup>RD</sup> RESPONDENT**

*(An application for extension of serve a Notice of Appeal and Record of Appeal out of time against the judgment of the High Court at Kericho (Justice h. Ong'udi) delivered on 20th February 2025)*

**RULING**

1. Before me is an application dated 20<sup>th</sup> March 2025 seeking leave to file Notice of Appeal out of time and Stay of execution of the Ruling delivered by Hon. Justice H.I Ong'udi on 20<sup>th</sup> February 2025.
2. The genesis of this matter lies in a long running dispute concerning the management and control of Nanga Kihoto Naivasha Limited. The applicants are shareholders of the company embroiled in litigation regarding the validity of elections held on 2<sup>nd</sup> February 2018 and subsequent corporate governance matters spanning over a decade.
3. The impugned ruling found the applicants to be in contempt of court orders issued on 28<sup>th</sup> July 2022 and dismissed the applicants' application dated 30<sup>th</sup> May 2022 seeking to be joined as interested parties, and allowed the application dated 23<sup>rd</sup> March 2023 which sought contempt findings against them.



4. The statutory period for filing a Notice of Appeal is 14 days from the date of the decision. This application was filed on 20<sup>th</sup> March 2025, representing a delay of approximately 14 days beyond the prescribed time.
5. The reasons for delay as deposed in the Supporting Affidavit are that time lapsed as the applicants sought to peruse the court order to ascertain certain facts that would enable them to file their appeal. Specifically, they state that the court file had gone missing for about 15 days, which delay was occasioned by the court's administrative processes.
6. The applicants depose that certain facts relied upon by the learned Judge were unknown to them. In particular, the Ruling referenced evidence from one Samuel Nganga, described as an OCPD, who allegedly swore an affidavit confirming certain facts. The applicants state that Naivasha has never had an OCPD called Samuel Nganga, his Force Number was never quoted, and this affidavit was not served upon them, despite the application dated 23rd March 2023 blaming the OCPD, the area Chief, and the County Commission together with the applicants for allegedly aiding in the invasion and unlawful interference with the company land. If the OCPD's evidence was central to establishing the alleged breach, the failure to serve it on the Applicants raises fundamental questions about procedural fairness.
7. The respondent opposes the application on grounds that it is bad in law, incurably defective, and an abuse of court processes. The respondent contends that the application improperly combines three distinct prayers that cannot be canvassed in one application, and that the court lacks jurisdiction to grant stay of execution in the absence of a filed Notice of Appeal.
8. My invitation to intervene on behalf of the applicant has been invoked under Rule 4 of the Court of Appeal Rules. This discretion is wide and unfettered. (See *Leo Sila Mutiso v. Rose Wangari Mwangi*, CA No. Nai. 255 of 1997). However, it must be exercised judiciously and upon reason rather than arbitrarily, capriciously, on whim, or sentiment (See *Julius Kamau Kithaka v. Waruguru Kithaka Nyaga & 2 Others*, CA. No. 14 of 2013). Some of the considerations to be borne in mind while dealing with an application for extension of time include the length of the delay involved, the reason(s) for the delay, the possible prejudice, if any, that each party stands to suffer depending on how the court exercises its discretion; the conduct of the parties; the need to balance the interests of a party who has a decision in his or her favour against the interest of a party who has a constitutionally underpinned right of appeal; the need to protect a party's opportunity to fully agitate its dispute, against the need to ensure timely resolution of disputes; the public interest issues implicated in the appeal or intended appeal; and whether, prima facie, the intended appeal has chances of success or is a mere frivolity.
9. That said, the applicants' attribute the delay to two interconnected factors: first, that the court file had gone missing for about 15 days due to administrative issues within the registry; and second, that they needed to access the file to verify surprising factual assertions in the Ruling regarding undisclosed evidence from one Samuel Nganga, allegedly an OCPD in Naivasha. The missing file prevented them from examining both the complete Ruling and the underlying affidavit referenced therein, thereby necessitating additional time once the file became available for verification before they could properly formulate grounds of appeal.
10. In my view, the delay of about 15 days is not inordinate in the circumstances. While it would have been preferable for the applicants to have produced and annexed any correspondence or evidence showing their efforts to locate the file, the absence of such evidence is not fatal where, as here, the explanation is plausible and the delay is not excessive. I am cognizant that administrative delays in court registries are unfortunately not uncommon from time to time and constitute circumstances genuinely beyond a litigant's control.



11. Again, I am satisfied that the intended appeal is not frivolous or vexatious. The applicants contend, inter alia that the learned Judge erred in finding them to be in contempt of court orders when, properly construed, the status quo orders issued on 28th July 2022 were meant to preserve the ex parte applicants' land and prevent interference. The applicants argue that as shareholders of the company, they were on the company land seeking to protect it from alienation, not acting in defiance of court orders.
12. Second, that the learned Judge relied upon evidence (the affidavit of Samuel Nganga) that was not disclosed to them and which they claim is of dubious authenticity, given that no OCPD by that name has ever served in Naivasha. Third, the learned Judge failed to appreciate the applicants' status as shareholders with a legitimate interest in protecting company assets, and that their presence on the land predated the status quo orders. These grounds raise serious questions of law and fact that merit consideration. It raises substantial issues that warrant full appellate consideration.
13. I am satisfied that this is a proper case for me to exercise my discretion and grant of extension of time. The applicants are hereby granted extension of time to file and serve their Notice of Appeal against the Ruling delivered by Hon. Justice H.I. Ong'udi on 20th February 2025 within fourteen (14) days from the date of this Ruling. No orders as to costs.

**DATED AND DELIVERED AT NAKURU THIS 31<sup>ST</sup> 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**

