



REPUBLIC OF KENYA



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Kiplenge and Kurgat Advocates v Estate of William Kimenjo Mosonik (Civil Application E035 of 2025) [2025] KECA 1795 (KLR) (31 October 2025) (Ruling)

Neutral citation: [2025] KECA 1795 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAKURU
CIVIL APPLICATION E035 OF 2025
MA WARSAME, JA
OCTOBER 31, 2025**

BETWEEN

KIPLENGE AND KURGAT ADVOCATES APPLICANT

AND

THE ESTATE OF WILLIAM KIMENJO MOSONIK RESPONDENT

(An application for extension of time to file a notice of appeal out of time against the ruling of the High Court at Nakuru (Ong'udi J.) delivered on 30th January 2025 in Nakuru Civil Suit E43 OF 2022)

RULING

1. The applicant has filed the instant application dated 26th March 2025 seeking extension of time to file a notice of appeal out of time under Rule 4 of the Court of Appeal Rules. The applicant seeks to challenge the ruling delivered on 30th January 2025 by Hon. Justice H.I. Ong'udi.
2. The backdrop of this application lies in a dispute concerning the estate of William Kimenjo Mosonik. The applicants were the advocates on record for the estate in succession proceedings. On 30th January 2025, the High Court delivered a ruling allowing the respondent's Preliminary Objection dated 6th September 2023, thereby dismissing the applicant's Advocate- Client Bill of Costs dated 9th September 2022 as time barred.
3. The High Court found that the bill of costs, which was brought approximately ten years after confirmation of grant on 30th August 2012, was statute barred under Section 4(1)(a) of the Limitation of Actions Act.
4. The applicant filed a notice of appeal on 26th March 2025, some 55 days after the judgment was delivered. The current application was filed on the same date, approximately two months after the ruling.



5. The reasons for delay as stated on the face of the application and a supporting affidavit sworn by Amos Andama, Advocate, dated 26th March 2025 are that the applicant was not aware that the ruling was coming up on 30th January 2025 due to mis-diarisation on the applicant's side and they were therefore not present in court when the ruling was delivered. The applicant contends that it only became aware of the ruling upon perusal of the court file and immediately lodged the instant application.
6. The respondent has filed a comprehensive replying affidavit dated 29th April 2025 opposing this application on several grounds. First, the respondent contends that the ruling was determined in favour of the respondent following a Preliminary Objection dated 6th September 2023 against the Applicant's Bill of Costs dated 9th September 2022, and that this occurred after both parties were given time to file their responses and submissions, demonstrating that the applicant was heard. Second, the respondent argues that the Bill of Costs sought to be raised offends the mandatory provisions of the Limitations of Actions Act under Section 4(1) and is time-barred as rightly determined by the High Court.
7. Third, the respondent asserts that the Grant in respect of the deceased's estate was confirmed on 30th August 2012, and that the six year limitation period lapsed in August 2018, with the matter being filed over ten years later. Fourth, the respondent disputes the claim of mis-diarisation, noting that all parties were present in court when the ruling date was issued, that the applicant has not provided any evidence to support this claim, and that dates and reminders are provided on the Judiciary CTS platform and communicated via SMS.
8. 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. 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 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. The period of delay in this case is 55 days from the date of delivery of the ruling on 30th January 2025 to the filing of the notice of appeal on 26th March 2025. While this is not an extraordinarily long delay, it nonetheless exceeds the prescribed statutory period and requires adequate explanation.
10. The applicant's explanation for the delay is premised entirely on a claim of mis-diarisation which allegedly resulted in the applicant being unaware of the ruling date and therefore not being present in court when the ruling was delivered. This explanation is problematic for several reasons. First, the respondent has provided uncontroverted evidence that all parties, including the applicant, were present in court when the ruling date was issued. Second, the respondent has pointed out that dates and reminders are provided on the Judiciary CTS platform and communicated via SMS message to respective parties' telephone and mobile numbers. Third, the applicant has not provided any documentary evidence to substantiate the claim of mis-diarisation, such as diary entries, correspondence, or other records that would demonstrate that a genuine error occurred in recording the ruling date.
11. Turning to the issue of prejudice, the respondent has demonstrated that it has relied on the finality of the High Court's decision for a period of nearly two months. The respondent stands to suffer prejudice



that cannot be compensated by an award of costs if this court allows the applicant's Notice of Motion Application, particularly given that the estate has already undergone succession and distribution.

12. Furthermore, this Court has held that Article 159 of *the Constitution*, which enjoins courts to administer justice without undue regard to procedural technicalities, cannot be used to camouflage indolence or negligence. As stated in *Floris Pierro & Another V Giancarlo Falasconi* 2014 eKLR Civil Appeal No. 145 of 2012, failure to comply with procedural requirements cannot be wished away as a procedural technicality, otherwise there will be no orderly conduct of business in court.
13. In light of the foregoing, I find that the applicant has failed to establish sufficient reason for the extension of time sought. The application is hereby dismissed with costs to the 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

