



REPUBLIC OF KENYA



**KENYA LAW**  
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**Kirathi v M'Amiru (Civil Application E125 of 2025)  
[2025] KECA 1748 (KLR) (24 October 2025) (Ruling)**

Neutral citation: [2025] KECA 1748 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NYERI  
CIVIL APPLICATION E125 OF 2025  
S OLE KANTAI, JA  
OCTOBER 24, 2025**

**BETWEEN**

**GEDION GITONGA KIRATHI ..... APPLICANT**

**AND**

**JACOB KARUMANI M'AMIRU ..... RESPONDENT**

*(An application for extension of time to file a Notice of Appeal out of time against the Ruling of the High Court of Kenya at Meru (Oguttu Mboya, J.) delivered on 9th July, 2025 in E.L.C. Case No. No. E006 of 2023.)*

**RULING**

1. I am asked in the Motion by the applicant Gedion Gitonga Kirathi to grant him leave to file an appeal out of time against the ruling of Mboya, J. delivered on 9<sup>th</sup> July, 2025 in Meru ELC No. E006 of 2023. In grounds in support of the application and in his supporting affidavit he says that time to lodge and serve a record of appeal has lapsed; that due to financial and economic constraints he is suffering he was unable to raise lawyers' fees to represent him in an appeal; that the delay in filing an appeal is not inordinate; that no prejudice will be suffered by any party if I grant leave. Further, that it has recently come to his knowledge that the respondent wants to transfer a property (in dispute); that he has an arguable appeal with high chances of success as shown in a draft Memorandum of Appeal; that the respondent is about to execute the decree of ELC. He has attached a draft Memorandum of Appeal where 6 grounds of appeal are set out and the ruling of the Judge where the applicant's application was dismissed.
2. Jacob Karumani M'Amiru (the respondent) in a replying affidavit says that the application is misconceived and is an abuse of the process of the Court; that the applicant did not file a defence after being served with plaint in ELC No. E006 of 2023; that the applicant and his lawyers failed to honour certain orders issued by the trial court; interlocutory judgment was entered and formal proof was done on a date when the applicant absented himself from Court; judgment was entered after formal proof on



8<sup>th</sup> May, 2024 in favour of the respondent after which a decree was issued which was duly executed and a title deed was issued in favour of the respondent. An application to set aside judgment was dismissed and the intended appeal has no merit.

3. I have considered the application.
4. The principles that apply in exercise of the unfettered discretion donated by rule 4 of the Court of Appeal Rules were considered and summarized as follows in the case of Leo Sila Mutiso vs. Rose Hellen Wangari Mwangi Civil Application No. NAI 255 of 1997:

ension 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."
5. The only reason given by the applicant for not filing an appeal on time is that he was hampered by financial constraints and could not engage a lawyer on time to represent him. But I am told by the respondent that the applicant did at ELC engage the services of M s Bebo & Mose Advocates; Mr. Ashara Advocates and Ms. Nyakwara Advocates to represent him. The applicant does not to me appear candid when he alleges that he could not afford the services of a lawyer when it is evident that he had engaged lawyers at ELC to represent him and I am not told why those lawyers did not move on time to file an appeal. There is no valid reason given for delay in filing an appeal.
6. I cannot see how the intended appeal can have any chance of succeeding in a situation where the applicant who was served with pleadings and summons failed to file a defence in the suit where interlocutory judgment was entered and the claim proved in a formal proof. Such an appeal has no chance of succeeding at all.
7. I find no merit in this application which I dismiss with costs to the respondent

**DATED AND DELIVERED AT NYERI THIS 24<sup>TH</sup> DAY OF OCTOBER, 2025.**

**S. ole KANTAI**

.....

**JUDGE OF APPEAL**

I certify that this is a true copy of the original

Signed

**DEPUTY REGISTRAR**

