



REPUBLIC OF KENYA



**Muhoro v Ndungu & another (Civil Application E629 of 2024)
[2025] KECA 1738 (KLR) (24 October 2025) (Ruling)**

Neutral citation: [2025] KECA 1738 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPLICATION E629 OF 2024
AO MUCHELULE, JA
OCTOBER 24, 2025**

BETWEEN

JOSEPH NJOROGE MUHORO APPELLANT

AND

JANE WANJIRU NDUNGU 1ST RESPONDENT

LAWRENCE MUHORO NDUNGU 2ND RESPONDENT

(Being an application for leave to appeal out of time from the Judgment and Decree of the Environment and Land Court at Thika (B.M. Eboso, J.) dated 9th July 2024 in ELC Case No. OS No. 118 of 2018 Consolidated with Thika ELC 11B of 2023 Formerly Gatundu HCC No. 117 of 2017)

RULING

1. By way of motion dated 19th November 2024 brought under sections 3, 3A and 3B of the *Appellate Jurisdiction Act*, Rule 4 of the Court of Appeal Rules and Articles 159 (2)(b) and (d) and 164(3)(a) of the *Constitution*, the applicant, Joseph Njoroge Muhoro, seeks leave to file and serve his appeal out of time. He was aggrieved by the judgment delivered on 9th July 2024 by the Environment and Land Court (ELC) (B.M. Eboso, J.) at Thika against which he filed and served a notice of appeal on 10th July 2024.
2. On the same date of the notice of appeal, the applicant's advocates requested for typed and certified copies of the proceedings and judgment. The applicant thereafter did nothing, believing that his advocates had filed the appeal. On 13th November 2024, after learning that no appeal had been filed, he instructed his present advocates who wrote to his then advocates seeking to taken over the matter on his behalf. On 19th November 2024 the present application was filed by his new advocates.



3. It would appear not to be in dispute that the certified copy of proceedings and judgment were ready for collection on 15th August 2025. This is why the respondents, Jane Wanjiru Ndungu and Lawrence Muhoro Ndungu, assert that the delay between 15th August 2024 and 19th November 2024 was not satisfactorily explained. The appeal was supposed to be filed within 60 days of the notice of appeal.
4. I note that no certificate of delay has been annexed for purposes of calculating time.
5. The suit was about adverse possession, and filed by the respondents over parcel of land Ndarugu/Gachege/T.124 in Gatundu. The respondents were successful. The applicant states that he has an arguable intended appeal.
6. In an application for this nature, the Court exercises its unfettered discretion to grant or not to grant extension. What the Court has to take into consideration is the length of the delay, the reasons for the delay, the chances of success of the intended appeal, and the degree of prejudice that the respondent stands to suffer if the application for extension is refused (see *Pan African Paper Mills Ltd -vs- Olaka* [2001]KLR 8).
7. From the time the certified proceeding and judgment were ready for collection and the time the applicant came with this application, the delay was for about 3 months. The application states that he trusted his then advocates to file the appeal, but when he noticed failure of communication he called and discovered that nothing had been done. Within 6 days he had filed this application. I note that a case belongs to a litigant and not his advocate; that he has a duty to pursue the prosecution of his case. If the applicant was aggrieved by the judgment of 9th July 2024 and wanted to challenge it on appeal, his non-action, between the time he filed the notice of appeal and his discovery on 13th November 2024 that no appeal had been filed, does not portray him as a diligent litigant; or a litigant in respect of whom this Court can exercise its discretion to indulge by extending time. The explanation for the delay is not satisfactory.
8. Consequently, I decline the request contained in the motion. The motion is dismissed with costs to the respondents.

DATED AND DELIVERED AT NAIROBI THIS 24TH DAY OF OCTOBER, 2025.

A. O. MUCHELULE

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JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR.

