



Ndii & 7 others v County Government of Tharaka Nithi (Civil Application E113 of 2025) [2025] KECA 1747 (KLR) (24 October 2025) (Ruling)

Neutral citation: [2025] KECA 1747 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NYERI
CIVIL APPLICATION E113 OF 2025
S OLE KANTAI, JA
OCTOBER 24, 2025**

BETWEEN

**GITONGA GERRARD NDII 1ST APPLICANT
ELOSY KANGAI KARAN 2ND APPLICANT
FRIDAH MBIRICI KAGENDO 3RD APPLICANT
KEZIAH KANYUA RIUNGU 4TH APPLICANT
ANISIA KAINYU MBWIRIA 5TH APPLICANT
VELISTER CIAGITARI NJERU 6TH APPLICANT
JAMES MWAMBIA RAGWA 7TH APPLICANT
CASTY MUTHONI GITONGA 8TH APPLICANT**

AND

THE COUNTY GOVERNMENT OF THARAKA NITHI RESPONDENT

(An application for temporary orders of injunction against the Ruling of the High Court of Kenya at Chuka (L. Gitari, J.) delivered on 9th April, 2025 in Constitution Petition No. E002 of 2024)

RULING

1. The Motion dated 25th July, 2025 has various prayers but the only ones I can deal with as a single Judge are prayers 5 and 6 to the effect:
 5. That this Honourable Court be pleased to grant the Applicants/intended appellants leave to appeal the Ruling of the High Court of Kenya at Chuka delivered on 9th April 2025 by Hon. Justice L. Gitari.



6. That this Honourable Court be pleased to grant the Applicants leave to file the intended appeal out of time.”
2. It is explained in grounds in support of the Motion and in a supporting affidavit of Gitonga Gerrard Ndi (the 1st applicant) that Gitari, J. delivered a ruling on 9th April, 2025 dismissing Chuka Constitutional Petition No. E002 of 2024; that the Judge had been transferred from the High Court of Kenya, Chuka, to the High Court of Kenya, Kitui and that the signed copy of the ruling was uploaded to the Judiciary electronic portal on 9th May, 2025 making it difficult for the applicants to take meaningful steps towards filing an appeal; that the physical file had moved from Chuka to Kitui and then back to Chuka which delayed availability of typed ruling; the the applicants through their lawyers made diligent efforts to obtain the ruling; that in those circumstances delay in filing an appeal was neither deliberate nor negligent but was occasioned by systemic and administrative hurdles that were beyond the applicants control.
3. Attached to the application is a copy of the ruling and correspondence by the applicants’ lawyers to the Kitui and Chuka Courts.
4. In a replying affidavit Franklin Mwendani, the County Attorney and Chief Legal Advisor of the respondent (Tharaka Nithi County Government) says that ruling was delivered on 9th April, 2025 and a Notice of Appeal was filed on 10th April, 2025; that record of appeal should have been filed within 60 days in accordance with our rules which was not done; that there is no Certificate of Delay attached to the application; that extension of time is not a right of a party but is an equitable remedy to a deserving party at the discretion of the Court.; that:

“The Intended Appellants have therefore failed to establish sufficient cause for the delay as required under Rule 4 of the Court of Appeal Rules, 2022, and the Respondent stands to suffer prejudice by the revival of an otherwise spent litigation.”
5. Further, that the application is overtaken by events as the applicants have paid the requisite Single Business Permit Fees as evidenced by Receipts and:

“The intended Appellants have also failed to demonstrate any prejudice that would be occasioned if the application is dismissed. On the contrary, the Respondent, being a public body, stands to suffer continued disruption of its lawful licensing functions.”
6. As stated by the respondent extension of time under rule 4 is at the discretion of the Court and, as always, discretion of the Court is to be exercised based on sound judicial principles. The principles were well laid in the case of Leo Sila Mutiso vs. Rose Hellen Wangari Mwangi Civil Application No. NAI 255 of 1997 as follows: -

It is now well settled that the decision whether or not to extend the time for appealing is essentially discretionary. It is also well stated that in general the matters which this Court takes into account in deciding whether to grant an extension 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.”
7. The applicants say that although ruling intended to be appealed was delivered on 9th April, 2025 it was not uploaded to the Judiciary’s electronic platform until 9th May, 2025. I note that the application is dated 25th July, 2025. This is a period of over 2½ months after that ruling was availed. I have not been



told why it took that period to make the application. The applicants have not given reason for delay and in those circumstances I do not think the period of delay is reasonable.

8. The respondent informs me – and has provided evidence to that effect – that the applicants have paid for licences and it is possible that the application for leave to appeal out of time has been overtaken by events.
9. I note that the Judge dismissed the applicants’ application and looking at the whole matter where the applicants have paid for licences I do not think that the intended appeal has chances of success.
10. All in all I am not satisfied that the applicants are entitled to any exercise of discretion in their favour. The part of the Motion I am dealing with has no merit and I dismiss it with costs to the respondent.

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

S. ole KANTAI

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JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

