



REPUBLIC OF KENYA



**Okello v Rombo (Civil Application E100 of 2025)
[2025] KECA 1764 (KLR) (24 October 2025) (Ruling)**

Neutral citation: [2025] KECA 1764 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPLICATION E100 OF 2025
DK MUSINGA, JA
OCTOBER 24, 2025**

BETWEEN

KENNETH OMONDI OKELLO APPLICANT

AND

SAITO YUKIE ROMBO RESPONDENT

(Being an application for enlargement of time to file a memorandum of appeal from the judgment of the High Court of Kenya at Nairobi (Maureen Odero, J.) delivered on 17th November 2023 in H.C. Succession Cause No. 257 of 2017)

RULING

1. The applicant's notice of motion dated 18th February 2025 seeks enlargement of time to file a memorandum and record of appeal from the judgment of the High Court (Maureen Odero, J.), delivered on 17th November 2023 in Nairobi Succession Cause No. 257 of 2017.
2. In his affidavit in support of the application, the applicant states that the respondent filed the above succession cause in respect of the estate of George Omolo Rombo without including all the beneficiaries of the estate; that he filed an application for revocation of the letters of administration that had been issued to the respondent; that on 17th November 2023 the court dismissed the application for revocation of the grant, subsequent to which the respondent demanded release of the deceased's pension benefits that had been set aside for the deceased's minor dependants from Kenyatta University Staff Retirement Benefits Scheme; that owing to the said demand, Kenyatta University Staff Retirement Benefits Scheme instructed the firm of Nyachoti and Partners to file an application for stay of execution and leave to appeal out of time.
3. The applicant further states that on 14th August 2024 the High Court granted leave as sought and subsequently the notice of appeal was lodged; that after Kenyatta University Staff Retirement Benefits



Scheme declined to release the pension funds, the respondent filed a complaint before the Retirement Benefits Authority (RBA), which complaint was dismissed on 4th July 2024.

4. On 2nd August 2024 the respondent filed an appeal before the Retirement Benefits Appeals Tribunal and on 27th August 2024. Kenyatta University Staff Retirement Benefits Scheme instructed its advocates to defend the appeal. On 19th December 2024 Retirement Benefits Appeal Tribunal allowed the appeal and ordered the release of the benefits that had been apportioned and set aside for the deceased's minor beneficiaries. Thereafter no appeal was preferred to this Court.
5. The applicant, who is acting in person, says that the delay in filing the appeal was occasioned by the pension manager of the Kenyatta University Staff Retirement Benefits Scheme and the firm of Nyachoti & Partners, who did not inform him in time that they were not pursuing the appeal.
6. The applicant believes that the intended appeal is arguable, saying that the court misdirected itself by relying on the date of issuance of birth certificates for the minor beneficiaries which was 18th October 2016, yet the registration had been done on 30th August 2014. He also faults the court for finding that the minor beneficiaries were not the children and or dependants of the deceased. The applicant contends that he should not be condemned for a mistake that was occasioned by other parties.
7. The respondent did not file any replying affidavit but filed submissions. In his submissions the respondent states, inter alia, that section 7 of the *akn ke act 1977 15 Appellate Jurisdiction Act* confers the High Court with power to extend time for filing an appeal; that pursuant to that provision, the applicant sought leave from the High Court vide an application dated 11th March 2014 and the same was granted vide a ruling dated 14th August 2024, but the applicant did not file any appeal. The respondent therefore contends that if the leave granted by the High Court lapsed, the applicant ought to have gone back to that court to seek extension of the same rather than file an application before this Court.
8. The respondent further submits that there has been inordinate delay in filing this application and the delay has not been explained sufficiently.
9. The respondent further states that the application is intended to keep her in endless litigation over the estate of her deceased husband, which is highly prejudicial to her and urges this Court to dismiss the same with costs.
10. I have considered the application as well as the submissions filed by the parties. In *Thuita Mwangi vs Kenya Airways Limited*, Civil Appeal No. 162 of 2002, this Court stated

“It is now well settled that the decision whether or not to extend the time for appealing is essentially discretionary. It is also well settled 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.”
11. It is not in dispute that the applicant was granted leave by the High Court to file an appeal out of time on 14th August 2024. He filed a notice of appeal on 20th August 2024 and on 27th August 2024 he applied for typed copies of the proceedings. He states that the letter bespeaking proceedings was also emailed to the respondent's advocates together with the notice of appeal, but the respondent's advocates do not seem to have received the same.



12. That notwithstanding, there is no explanation why the application for extension of time was not filed until 27th February 2025. The current application was filed 450 days from the date of the judgment sought to be appealed from, and 161 days from the date he was granted leave to file an appeal out of time. That delay has not been well explained. It is not enough to state that the delay is attributable to the failure of the Kenyatta University Staff Retirement Benefits Scheme to inform the applicant that it had not instructed the firm of Nyachoti & Partners advocates to lodge an appeal. Even if that was the case, the applicant ought to have moved with speed as soon as he was granted leave by the High Court on 14th August 2024 to file an appeal out of time.

13. I have perused the impugned judgment as well as the proposed grounds of appeal by the applicant. I entertain serious doubts as to chances of success of the intended appeal.

14. All in all, I find this application unmeritorious and dismiss it.

Each party shall bear its own costs of the application.

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

D. K. MUSINGA, (PRESIDENT)

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JUDGE OF APPEAL

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

Signed

Deputy Registrar

