



REPUBLIC OF KENYA



**Slade v Shah (Suing through his Duly Appointed Attorney Neelih Amratlal Shah) & 4 others  
(Civil Application E129 of 2025) [2025] KECA 1688 (KLR) (21 October 2025) (Ruling)**

Neutral citation: [2025] KECA 1688 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NYERI  
CIVIL APPLICATION E129 OF 2025  
A ALI-ARONI, JA  
OCTOBER 21, 2025**

**BETWEEN**

**HAWA ALI LERUK SLADE ..... APPLICANT**

**AND**

**VINOD KUMAR KANTILAL SHAH (SUING THROUGH HIS DULY  
APPOINTED ATTORNEY NEELIH AMRATLAL SHAH) ..... 1<sup>ST</sup> RESPONDENT  
ABDI AZIZ ..... 2<sup>ND</sup> RESPONDENT  
THE ESTATE OF NAGIN CHOUHAN ..... 3<sup>RD</sup> RESPONDENT  
THE LAND REGISTRAR ..... 4<sup>TH</sup> RESPONDENT  
THE HON ATTORNEY GENERAL ..... 5<sup>TH</sup> RESPONDENT**

*(Being an application for leave to file and serve a notice of appeal out of  
time from the Judgment and Decree of the Environment and Land Court  
at Nanyuki (Mbugua, J.) dated 14th May 2025 in ELC No. E003 of 2021)*

**RULING**

1. Before the Court is a notice of motion dated 2<sup>nd</sup> September 2025 brought under Article 48, 50(1) and 159 (2)(d) of [the Constitution](#) of Kenya, Sections 3A and 3B of the [Appellate Jurisdiction Act](#) and rules 4, 5(2)(b), 42, 82 and 90 of the Court of Appeal Rules, Sections 1A and 1B of the [Civil Procedure Act](#), seeking enlargement of time within which to file the notice of appeal and for bespeaking the proceedings.
2. The application is based on the grounds on the face of the application and the applicant's supporting affidavit dated 2<sup>nd</sup> September 2025, stating that she is aggrieved by the judgment of the Environment and Land Court Dated 14<sup>th</sup> May 2025 and has instructed her advocates to appeal against the whole



judgments; that the application has been made without unreasonable delay; there is an arguable appeal with high probability of success and the applicant is apprehensive that if the awarded amount is paid to the respondent, the respondent would not be in a position whatsoever to refund the same in the event the appeal is successful as the respondent's means is unknown to the applicant; there is need for a stay of execution order so that the appeal may be determined on merit, preventing it from being rendered nugatory; she resides in the United Kingdom; the judgement was not immediately made available to her, as her counsel time to obtain the same; as soon as she received a copy thereof she flew to Kenya to meet her counsel for purposes of discussing the intended appeal; she stands to suffer substantial loss if the orders sought are not granted, as the 1<sup>st</sup> respondent is likely to dispose of the suit property and she will suffer irreparable loss.

3. In opposition the 1<sup>st</sup> respondent has filed a replying affidavit sworn on 2<sup>nd</sup> October 2025, stating that no sufficient cause has been shown by the applicant for the Court to grant the orders sought; the High Court judgment was delivered on 14<sup>th</sup> May 2025, and the applicant's counsel conceded they were aware of it on that same day; a litigant does not require typed proceedings and judgment to lodge a notice of appeal, as it is merely an expression of intent to appeal and does not contain grounds; the applicant's excuse that the appeal process wasn't started due to a delay in obtaining the typed judgment is not plausible, the delay is unexplained and inexcusable; his advocate sent a copy of the typed and signed judgment via email on 15<sup>th</sup> May 2025 to the applicant's counsel just one day after its delivery, making the applicant's claim an "outright lie"; the applicant has failed to provide any evidence of active steps taken to obtain the judgment such as correspondence with the advocate or the court registry; the motion is an afterthought; instructions could have been conveniently issued to the applicant's advocates through virtual means like email or WhatsApp; and the applicant has not provided any proof that she was actually out of the country, nor has she sought an order for stay of execution.
4. Learned counsel for the respondent filed submissions and a list of authorities, both dated 16<sup>th</sup> October 2025 reiterating the grounds on the face of the application and the averments in the supporting affidavit. Counsel further asserted that the applicant has not demonstrated any efforts made to obtain a copy of the judgment. Specifically, no application for a typed judgment or a receipt for payment of copying fees has been annexed to the supporting affidavit. Counsel contended that this default is evidence of the applicant's "laxity and indolence" in prosecuting the intended appeal, making her undeserving of the court's discretion.
5. Further, counsel submits that extending time to file a notice of appeal is a discretionary exercise, and delay, regardless of its period, must be explained to the satisfaction of the court. Relying on the decision of *Gloria Paolo vs. Pietro Scavo* [2019] KECA 276 KLR, counsel asserted that delay must be sufficiently explained before the court considers other factors.
6. I have considered the application, the affidavit in support, the replying affidavit and the submissions. The issue to be determined is whether the applicant is deserving of the orders sought. Rule 4 of the Court of Appeal Rules governs extension of time. The Rule allows this Court to exercise discretion to extend the time limited by the Rules for doing any act authorised or required by the Rules. In *Dominic Okodoi vs. Republic* [2021] eKLR, this Court held as follows:

“Rule 4 of the Court of Appeal Rules gives the Court unfettered discretion to –

“... extend the time limited by these Rules, or by any decision of the Court or of a superior Court, for the doing of any act authorized or required by these Rules, whether before or after the doing of the act ...,” on such terms as it thinks just.



The Court of Appeal in *Leo Sila Mutiso vs. Helen Wangari Mwangi* [1999] 2 EA p231 set out the principles to be applied in exercise of its discretion in determination of any application under Rule 4. The Court held that; -

“the decision whether or not to extend time is discretionary. The Court in deciding whether to grant an extension of time takes into account the following matters: first, the length of the delay; second, 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 applicant informed the Court that she is desirous of preferring an appeal; that she lives out of jurisdiction and her counsel needed a copy of the judgement in order to obtain instructions. Further she stated that upon receipt of the judgement she had to travel to the country in order to discuss the matter of appeal with her counsel. It is true that parties can discuss matters over the phone, nonetheless a matter of appeal may not be casually discussed over the phone, many issues come into consideration and a party may find it necessary to engage with counsel the way the applicant has done. It is a long route to achieving the results, but one cannot fault the applicant’s decision.
8. The delay is four (4) months and in my view this cannot be considered inordinate in the circumstances of the case. The respondent has also not demonstrated the likely prejudice he may suffer if the applicant succeeds in obtaining an extension of time. Further the annexed draft grounds of appeal cannot be said to be frivolous.
9. In the end, I allow the application and direct that the notice of appeal be lodged and served in the next fourteen (14 days), likewise the letter bespeaking the proceedings.
10. Costs will abide the outcome of the intended appeal.

**DATED AND DELIVERED AT NYERI THIS 21<sup>ST</sup> DAY OF OCTOBER, 2025.**

**ALI-ARONI**

.....

**JUDGE OF APPEAL**

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

Signed

DEPUTY REGISTRAR

