



REPUBLIC OF KENYA



Wanjohi (Suing as a Personal Representative of Stanley Wanjohi Mathenge) v Wahome & 4 others (Civil Application E066 of 2025) [2025] KECA 1712 (KLR) (22 October 2025) (Ruling)

Neutral citation: [2025] KECA 1712 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NYERI
CIVIL APPLICATION E066 OF 2025
A ALI-ARONI, JA
OCTOBER 22, 2025**

BETWEEN

IRENE WANGARI WANJOHI (SUIING AS A PERSONAL REPRESENTATIVE OF STANLEY WANJOHI MATHENGE) APPELLANT

AND

**FG WAHOME 1ST RESPONDENT
JW MUNUHE 2ND RESPONDENT
PH GITONGA 3RD RESPONDENT
JM MUMU 4TH RESPONDENT
FN KAROBIA 5TH RESPONDENT**

(An application for leave to appeal out of time against the Judgment/Decree of the High Court at Nyeri (Olola, J.) delivered on 9th May, 2024 in ELC Case No. E450 of 2014)

RULING

1. Before the Court is an application by way of a notice of motion dated 23rd April 2025 brought under Article 45 and 53 of *the Constitution* of Kenya 2010, section 79(G) of the *Civil Procedure Act*, and rule 4 of the Court of Appeal Rules, seeking leave to appeal out of time.
2. The application is predicated on the grounds on the face of the application and the supporting affidavit of the applicant dated 23rd April 2025, stating that the initial defendant, Stanley Wanjohi Mathenge (deceased) who was 85 years was of ill health and admitted to hospital severally since December 2022, the duration preceding his demise on 17th October, 2024; he had been battling diabetes, cancer and a stroke and the illness had a profound effect on his ability to prosecute and or follow the legal process; the intended appellant is the deceased daughter and the personal representative of the estate of the



deceased; she is aggrieved by the decision of Justice Olola delivered in this matter on 9th May 2024 and intends to appeal against the entire decision; the suit property LR No. 275/067 Amboni has since being subdivided by the respondents who engaged a surveyor and proceeded to place beacons on the property and later subdivided it without the involvement of the deceased's family despite the fact that the trial court had issued orders of partition and or transfer of the suit property into the joint names of the applicant and the deceased; the order did not dispensed with the deceased's right to be involved, served and or informed of the survey exercise and therefore any purported execution of the order after his demise was illegal, unjust and unfair; when the applicant's father's health deteriorated and he was unable to defend and or instruct in the trial case, the applicant applied to be appointed as a guardian ad litem vide an application dated 14th October 2024 that was allocated 10th December, 2024 for hearing; unfortunately, on 17th October 2024, the late Stanley Wanjohi passed away, he was buried the same month; on the date of hearing of the application and in the presence of counsel for the respondents, the trial Judge directed the counsel to get instructions and stood the matter over generally; she commenced the process of obtaining a grant of Letters of Administration Ad litem in Nyeri MSC SUCC No. E004 of 2025 Estate of Stanley Wanjohi Mathenge (Deceased) to enable the her obtain locus to file and prosecute this application for leave to appeal and any subsequent appeals on behalf of the estate; the delay in filing this application is not inordinate in the circumstances; it is just, fair and reasonable that the court be pleased to extend the time for filing a notice of appeal, memorandum of appeal and record of appeal out of time; there are high chances of the appeal succeeding if the application is granted; the respondent does not stand to suffer any prejudice upon grant of the orders sought; the appellant has an arguable appeal with high chances of success and it is the interest of justice this application be allowed.

3. The respondents filed grounds of opposition dated 9th July 2025, an alien document as far as the rules of this Court are concerned. The respondents in opposing the application ought to have filed a replying affidavit. The court will therefore ignore the same.
4. Learned counsel for the applicant filed submissions dated 14th July 2025 and rehashed the contents of the application and supporting affidavit. Counsel submitted further that the appeal is arguable based on the draft memorandum of appeal. The respondents' suit was for debt collection. There was no prayer or challenge to revoke the applicant's original title deed, which remains intact and in his possession; hence, execution of the decree would mean that multiple title deeds have been produced over the same subject property, whilst the original title remains intact and in the applicant's possession. In support counsel cited Republic vs Advocates Disciplinary Tribunal ex parte Apollo Mboya [2019] KEHC 6379 (KLR), where the court held that in a case of review, the term "mistake or error apparent" by its very connotation signifies an error which is evident per se from the record of the case and does not require detailed examination, scrutiny and elucidation either of the facts or the legal position.
5. Further counsel submitted that the respondents have never taken possession of the suit property, and the children of the deceased continue to occupy the same. The applicant and other beneficiaries stand to be seriously be prejudiced if the application is not allowed, as the respondents may seek to evict them pursuant to the judgment.
6. Counsel further contended that this Court has unfettered discretion to extend time to file an appeal considering the impugned decision was made on 9th May 2024, being eleven (11) months before the application was filed. In support of the argument counsel relied on Salat vs. Independent Electoral and Boundaries Commission & 7 Others [2014] KESC 12 (KLR), where the Court referred to Paul Wanjohi Mathenge v Duncan Gichane Mathenge [2013] eKLR, stating that the discretion under rule 4 is unfettered, and has to be exercised judicially, not on whim, sympathy or caprice.
7. Counsel challenged that the respondents' grounds of opposition are a "defective pleading, bad in law and an abuse of the court process" and should be struck out. Further that the respondents have not



countered the reasons for extension of time for filing the appeal but rather ventured into arguing the appeal on merit. The documents that the respondent have sought to rely on are drawn on ‘strictly without prejudice basis’ and cannot therefore be relied on to give guidance to court.

8. Learned counsel for the respondents filed submissions dated 12th July 2025. Counsel argued that the application should be dismissed because it is overtaken by events, misconceived, vexatious, an afterthought, and a total abuse of the court’s process and that the applicant has approached the court with unclean hands.
9. On the application being overtaken by events, counsel argued that the application for leave to appeal is moot because the underlying decree has been fully executed. The parts requiring the original applicant’s signature were executed by the court. The original suit land was transferred into a joint title in the name of the applicant and the five respondents. The land was subsequently subdivided into Nyeri/Mweiga/6126 and Nyeri/Mweiga/6127. This is confirmed by supporting documents, including an application for consent to transfer (dated 4th June 2024), a letter of consent (dated 26th June 2024), a joint title deed, and an approved partition.
10. On the applicant approaching the court with unclean hands, counsel asserted that the applicant, the personal representative, should not be allowed to pursue the appeal because the original defendant, her father, had previously agreed to a settlement. The original defendant, through his advocate, offered monetary compensation via an email on 8th November 2023. This offer was accepted through a reply letter on 18th December 2023. However, the original defendant did not pay for the land, and thus the decree execution proceeded. Counsel emphasized that the original defendant was well-represented by senior counsel and extensively submitted on the application that led to the ruling of 9th May 2024.
11. I have considered the application, the affidavit in support and the submissions. The issue for determination is whether the applicant is deserving of the orders sought. Rule 4 of the Court of Appeal Rules governs the extension of time. The Rule allows this Court to exercise discretion to extend the time limited by the Rules for doing any act authorized 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 the exercise of its discretion in the 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.”

12. The issue before the Court is whether to extend the time within which to file an appeal. Mine at this stage is not to consider the merit or otherwise of the intended appeal. A glance at the draft grounds of appeal does not portray them as frivolous. I also am of the view that the reasons given for the delay to file an appeal on time are plausible. The respondents failed to file an affidavit, and their submissions are



more on the merit of the appeal; parties will have time to ventilate on whether the appeal is meritorious or not at the opportune time.

13. For now, I allow the extension of time. The notice of appeal shall issue forthwith, and not later than seven (7) days from the date of this ruling, which should trigger the other steps towards setting the appeal in motion.
14. Costs of the application to abide by the outcome of the appeal.

DATED AND DELIVERED AT NYERI THIS 22ND DAY OF OCTOBER, 2025.

ALI-ARONI

.....

JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR

