

**IN THE COURT OF
APPEAL AT NYERI**

(CORAM: ALI-ARONI J.A. (IN

CHAMBERS) CIVIL APPLICATION NO.

E124 OF 2025 BETWEEN

DICKSON MATHENGE WAMBUGU 1ST

APPLICANT GEORGE KINYUA MATHENGE.....2ND

APPLICANT

AND

CONSOLATA NJERI MWANGI.....RESPONDENT

(An application for an extension of time and leave to file an appeal out of time from the Judgment of the Environment and Land Court at Nyeri (Olola, J.) delivered on 27th February, 2025

in

ELC Appeal No. E038 of 2022)

RULING

1. Before the court is an application by way of a notice of motion dated 27th August 2025, brought under **rule 4 of the Court of Appeal Rules**, seeking an extension of time and leave to file an appeal out of time.
2. The application is predicated on the grounds on the face of the application and the affidavit of the 1st applicant, on his behalf and that of the 2nd applicant, sworn on 27th August 2025,

stating that the time for filing the intended appeal has lapsed;
judgment in the

matter was delivered on 27th February 2025; the applicants were dissatisfied with the outcome; they instructed their advocates to file an appeal; the advocates immediately filed a notice of appeal; and subsequently filed the appeal within the time allowed by the law; however the appeal was not approved and therefore not registered for reasons that no certificate of delay was attached, even though the appeal was filed on time, and that the Deputy Registrar had not signed the notice of appeal.

3. Further, he deposed that the applicants took steps to rectify the situation as early as 10th May 2025, by writing to the Deputy Registrar in Nyeri, seeking for a certificate of delay, which was not issued until 30th July 2025; and they only managed to obtain a copy of the signed notice of appeal after it was received in the registry of this Court on 19th August 2025; though the time for filing the appeal has lapsed, the applicants remain determined to pursue the appeal and pray that the court exercises its discretion in their favour, as the appeal is arguable.
4. The application is opposed by the respondent **Consolata Njeri Mwangi** in an affidavit dated 13th October 2025, where she deposed that the application is vexatious and frivolous; it lacked the authority from the 2nd applicant; there is no evidence of service upon her of pleadings or the application, other than applicants' submissions; the application violates **Order 51 Rule 13(3) of the Civil Procedure Rules**; the notice of appeal was never served within the mandatory time

frame; the applicants failed to file the memorandum of appeal correctly after obtaining the necessary

documents; the applicants have not paid costs awarded by the lower court; and the respondent therefor seeks for security for costs due to unpaid amounts.

5. Learned counsel for the applicants filed submissions dated 4th October 2025 and rehashed the contents of the application and the supporting affidavit. Further counsel submitted that the delay in filing the appeal has not been intentional nor has it been inordinate, but was caused by the time taken to supply the necessary documents by the court registry. They are prepared to comply with the court's orders.
6. In opposing the application, learned counsel for the respondent filed submissions dated 13th October 2025, rehashing the contents of the replying affidavit; including that the applicants failed to serve the notice of appeal within the required timeframe; the appeal was filed prematurely on 5th March 2025, without certified copies of lower court documents; the certificate of delay was deemed unnecessary as documents were supplied on 16th April 2025; that the premature filing led to procedural errors; and that the application is an attempt to circumvent justice.
7. I have considered the application, the affidavit in support, the replying affidavit and the rival submissions filed by the parties. The issue to be determined is whether the applicants deserve the orders they are seeking. **Rule 4 of this Court's Rules** governs the extension of time. The rule allows the 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.

In **Leo Sila Mutiso vs. Helen Wangari Mwangi [1999] 2 EA p231**, the court 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.”

8. Both parties attribute the delay to technicalities: a certificate of delay that was not initially necessary being sought by the registry and the fact that the Deputy Registrar had not endorsed the notice of appeal. The applicants state that they received the signed notice of appeal and the certificate of delay

after the time for filing the appeal had passed. The applicants further indicate that they made the application nine (9) days after receiving all the necessary documents, which is not inordinate.

9. In opposing the application, the applicant complains that she was in the dark on the intended appeal as she was not served with the notice of appeal or even the current application, which she came by in the court's portal. The respondent became aware of the application and was able to respond to the same, which is now a non-issue. As for the lack of service of the notice of appeal, the rules are clear on the steps to be taken.
10. For now, as earlier indicated, there is only one issue to be considered. I find that the delay as explained in the circumstances of the facts presented before the court cannot be said to be inordinate. Secondly, the draft memorandum of appeal appears to raise arguable issues, and thirdly, the respondent has not demonstrated the likely prejudice to be suffered if the application is allowed.
11. In the circumstances, the court is inclined to allow the application. The applicants are directed to file and serve the record of appeal within the next 30 days of this ruling.
12. Costs of the application to abide by the outcome of the appeal.

Dated and delivered at Nyeri this 15th day of October, 2025.

ALI-ARONI

.....
JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR