



**Thiritu v Kaburu (Civil Application E135 of 2025)
[2025] KECA 1860 (KLR) (7 November 2025) (Ruling)**

Neutral citation: [2025] KECA 1860 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NYERI
CIVIL APPLICATION E135 OF 2025
S OLE KANTAI, JA
NOVEMBER 7, 2025**

BETWEEN

ZACHARY THIRITU APPLICANT

AND

ZACHARY KABURU RESPONDENT

(An application for leave to lodge an appeal out of time against the Ruling of the Environment and Land Court of Kenya at Isiolo (Oguttu Mboya, J.) delivered on 5th June, 2025 in E.L.C Civil Appeal No. E011 of 2024)

RULING

1. The applicant Zachary Thiritu applies in the Motion brought under rule 4 of the Court of Appeal Rules amongst other provisions of law that I be pleased to grant him leave to lodge an appeal out of time against the decision delivered on 5th June, 2025 by Oguttu Mboya, J. in the High Court of Kenya at Isiolo in Environment and Land Court (ELC) land appeal No. E011 of 2024. In grounds in support of the application and in his supporting affidavit he says amongst other things that he was dissatisfied with that judgment and he filed a notice of appeal; that he was unable to file an appeal on time as typed proceedings and judgment were not availed to him on time after he had requested for them; that he is aggrieved by the judgment of ELC and the appeal is arguable as shown in draft Memorandum of Appeal and that it is in the interest of justice that the application be allowed; that he will suffer irreparable damage if the application is not granted. Further, that his former lawyers failed to request for proceedings as required; his new lawyers requested for proceedings which were supplied on 19th August, 2025 when the period for filing an appeal had already expired; that a delay of 9 days was not deliberate but was occasioned by inadvertence on the part of previous advocate; that the intended appeal raises weighty issues for determination; that the respondent will not suffer any prejudice incapable of being compensated by costs if the application is granted. Attached to the application is a copy of the judgment of ELC where the appeal was dismissed; notice of appeal dated



9th June, 2025, draft Memorandum of Appeal where 7 grounds of appeal are set out, amongst other attachments.

2. I have seen hearing notice dated 21st October, 2025 where parties were informed of the hearing date and required to file written submissions but I have not seen submissions by either side. I have also seen an affidavit of service by Dorcas Mwari Nyamu, advocate who says that on 26th September, 2025 at 1715 hours she served the application to the respondent on kennethmuthomi911@gmail.com. I have not seen any replying affidavit by the respondent.
3. The principles that apply in an application for leave to extend time under rule 4 of our rules was 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."

4. The applicant says that the previous lawyers did not apply for proceedings as required and that when he appointed the current lawyers that step was taken but that proceedings were supplied 9 days out of time required for filing an appeal. I think that that is not inordinate delay and the delay has anyway been explained. The draft Memorandum of Appeal sets out reasonable grounds of appeal.
5. I think that this is an application where I should exercise my direction in favour of the applicant. I allow the Motion. Let appeal be filed within the next fourteen (14) days. I make no order on costs.

DATED AND DELIVERED AT NYERI THIS 7TH DAY OF NOVEMBER, 2025.

S. OLE KANTAI

.....

JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

