

**IN THE COURT OF APPEAL
AT NAIROBI**

**(CORAM: MUMBI NGUGI,
JA)**

CIVIL APPEAL (APPLICATION) NO. E170 OF

2022 BETWEEN

**FRED MUTUA T/A
NZIOKI MUTUA & ASSOCIATES.....APPLICANT**

AND

**SHEILA JEROTICH BETT.....1ST RESPONDENT
MBUKONI HOLDINGS LIMITED 2ND
RESPONDENT EVANS
ONGERI 3RD RESPONDENT
JACQUELINE KOKI WAMBUA.....4TH
RESPONDENT**

*(Being an application for extension of time and for leave to have
the record of appeal dated 12th April 2023 and filed out of time
be admitted)*

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RULING

1. In his application dated 28th July 2025 expressed to be brought under sections 3A and 38 of the Appellate Jurisdiction Act and rules 4, 84, 90 and 94 of the Court of Appeal Rules, 2022, the applicant, **Fred Mutua T/A Nzioki Mutua & Associates**, seeks an order that his application *'be deemed a response to the respondent's application dated 7th June 2023'*; that this Court does enlarge time and grant leave to have the record of appeal dated 12th April 2023 and filed out of time admitted for the

purposes of the appeal; and that the Court does subsequently grant leave to the applicant to

file a supplementary record of appeal to incorporate documents inadvertently omitted from the record of appeal, being a certificate of delay and a certified copy of the decree. He also prays that the costs of the application be in the cause.

2. The application is supported by an affidavit sworn by the applicant on 28th July 2025 and is based on the grounds on its face. The appellant avers that the judgment in Environment and Land Court (ELC) Case No. 42 of 2014 that he seeks to appeal against was delivered on 1st February 2022. He filed a notice of appeal on 11th February 2022 and a memorandum of appeal on 31st March 2022. Further, that a record of appeal dated 12th April 2022 was filed and served on the respondents. However, an unfamiliarity with the appellate rules led to the record being filed *'irregularly within time'* because it did not include a certificate of delay and a certified copy of the decree. He states that upon realising the omission, he wrote to the Deputy Registrar of the ELC requesting for the missing documents, which he has since obtained.
3. From the applicant's averments, it appears that he was moved to file the present application by an application by

the 1st respondent dated 7th June 2023 when he received
an email to

the effect that he had to pay Kshs. 400 in court fees. He states that the omission of the certificate of delay and decree was a genuine administrative lapse; that he has since applied for the documents; and that the appeal raises arguable issues. He urges this Court to grant him the orders that he seeks.

4. The application appears to be unopposed as there is no replying affidavit or submissions by the respondents on record.
5. Rule 4 of this Court's Rules grants unfettered discretion to the Court to extend time for the doing of any act prescribed under the Rules. The Court's jurisdiction to extend time is discretionary, and the factors to be considered in determining an application under rule 4 are well settled- see **Leo Sila Mutiso v Hellen Wangari Mwangi** [1999] 2 EA 231. These are the length of the delay; the reason for the delay; (possibly) the chances of the appeal succeeding; and the degree of prejudice to the respondent should the orders sought be granted.
6. In this case, the judgment appealed against was delivered on 1st February 2022. The appellant avers that he filed a

notice of appeal on 11th February 2022, and a memorandum of appeal on 31st March 2022. The appellant avers that he filed

a record of appeal dated 12th April 2022, but in his application, he seeks to have a record of appeal dated 12th April 2023 admitted out of time for purposes of the appeal. The record of appeal placed before the Court is dated 12th April 2023, over a year after the notice of appeal was filed and long after the 60-day period prescribed under rule 84 of this Court's Rules had lapsed. That is a period that is, by all measures, inordinate.

7. The question is whether the delay is excusable. The applicant attributes the delay and failure to incorporate the requisite documents in the record of appeal to unfamiliarity with appellate procedures, inadvertence, and office administrative lapses. He avers that he has since written to the Deputy Registrar to obtain the missing documents.
8. I have considered the application and the averments by the applicant. He has not filed submissions in support of his application. The applicant readily admits that his record of appeal was filed out of time, more than a year after he filed his notice of appeal. The record indicates that he is an advocate, acting for himself and his co-defendants in transactions that resulted in the dispute before the trial

court. Even were unfamiliarity with the law and procedures
of the

Court a sufficient reason for failing to comply with mandatory procedural rules, such an excuse cannot be heard to fall from the mouth of an advocate.

9. It is telling, however, that the applicant has not annexed a copy of the letter requesting for the proceedings which he indicates, in his letter dated 25th July 2025, that he wrote to the Deputy Registrar; or the email from the Deputy Registrar dated 25th October 2022 that he references in the same letter, indicating that the proceedings were ready for collection, in asking for the certificate of delay to be issued.
10. I note further that the applicant sent an email to this Court dated 20th January 2025 in which he raised the issue of fees which, he alleged, if I understand him correctly, prevented him from filing an affidavit and submissions in response to an application by the respondent. It would appear that he knew, as far back as January 2025, that he had not filed his record of appeal in accordance with the Rules of this Court. He nonetheless waited a further seven (7) months to file the present application. He has not explained this further delay, and there is also nothing before me that explains the initial delay of one year

between the filing of the notice of appeal and

the record of appeal dated 12th April 2023 which he now seeks to have admitted out of time.

11. Having found that the period of delay in this matter is inordinate and that no sufficient reasons for it have been advanced, I find no basis to exercise discretion in favour of the applicant. The application dated 28th July 2025 is accordingly dismissed.
12. Since the respondent did not file a response to the application, there shall be no order as to costs.

Dated and delivered at Nairobi this 28th day of November 2025.

MUMBI NGUGI

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JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR.