

**IN THE COURT OF
APPEAL AT NYERI**

**(CORAM: KANTAI, J.A. - IN
CHAMBERS) CIVIL APPLICATION NO.
E151 OF 2025 BETWEEN**

JECINTA WAITHIMU GATIMU.....APPLICANT

AND

PERIS GATHONI GATIMU.....RESPONDENT

(An application for extension of time to file and serve a Notice of Appeal, Memorandum of Appeal and Record of Appeal out of time against the Judgment of the High Court of Kenya at Meru (Edward M. Muriithi, J.) delivered on 3rd September, 2025

in

H.C. Civil Appeal No. E052 of 2023.)

RULING

The applicant, **Jecinta Waithimu Gatimu** has by Motion brought under **Articles 47, 48 and 159** of the **Constitution of Kenya, 2010** and **rules 4, 1(2), 5(2), and 39** of the **Court of Appeal Rules** applied that the Court be pleased to extend time and grant her leave to file a Notice of Appeal out of time, Memorandum of Appeal and Record of Appeal against the judgment of **Muriithi, J.** delivered on 3rd September, 2025 in Kerugoya High Court Civil Appeal No. E051 of 2023 Peris Gathoni Gatimu vs. Jecinta Waithimu Gatimu. In grounds in support of the application and in her supporting affidavit she says that she was dissatisfied with the judgment she wants to appeal; she was not aware that she had fourteen days to file a Notice of Appeal but thought that she had thirty days to do so; that she had delayed in instructing a lawyer to appeal against the said judgment; that

the application has been

brought without delay and that she has an arguable appeal with high chances of success. She attaches a copy of the judgment intended to be applied and says, in addition, that she has applied for proceedings to enable her appeal; that she acted in person without benefit of legal representation; although she was present when judgment was delivered she thought that she had thirty days to appeal and that it was only after appointing a lawyer to represent her that she was informed that period for appealing was fourteen days which had by then lapsed; she thinks that she has an arguable appeal as set out in draft Memorandum of Appeal.

In a replying affidavit the respondent, **Peris Gathoni Gatimu** opposes the application stating that it has been brought with inordinate delay which delay has not been explained; that wrong provisions of law have been cited in support of the application robbing me of jurisdiction to entertain the application; that the matter before the High Court was a succession one and that the applicant was not given leave to appeal; that the applicant has not shown that the intended appeal has chances of success.

The principles that apply in an application for leave to extend time were well set out 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."

One of the important issues taken by the respondent in opposing the application is that the appeal at the High Court involved a succession dispute and that the applicant was required to seek and obtain leave to appeal in such proceedings. I agree with that proposition. I have perused the judgment of the High Court of Kenya at Kerugoya (CA No. E052 of 2023). There is no indication whether leave to appeal was sought or obtained and without that information I am of the view that the respondent can take up that issue in other proceedings.

I am unable to agree with the respondent that wrong provisions of law have been cited in bringing the application. The applicant, in addition to relying on articles of the Constitution has brought the application under rule 4 of our rules which is the correct rule for an application like this one.

The judgment intended to be appealed was delivered on 3rd September, 2025. The applicant says that she was unrepresented and was of the mistaken view that a Notice of Appeal was to be filed within 30 days. I can allow that as a valid excuse by a person who is not learned in law and was acting in person. I note that the application is dated 9th October, 2025 which is slightly over 1 month after the said judgment. So there is no inordinate delay and the slight delay is reasonably explained I have seen the grounds set out in draft Memorandum of Appeal and I take the view that they are substantial grounds.

I allow the application. Let Notice of Appeal be filed within ten (10) days of today. Costs of the Motion will be in the appeal.

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

S. ole KANTAI

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JUDGE OF APPEAL

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

Signed
DEPUTY REGISTRAR

