



**Patel v Ismail Rahimtullah Trustees Registered & 3 others (Civil Application E083 of 2025) [2025] KECA 2052 (KLR) (28 November 2025) (Ruling)**

Neutral citation: [2025] KECA 2052 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAIROBI  
CIVIL APPLICATION E083 OF 2025  
M NGUGI, JA  
NOVEMBER 28, 2025**

**BETWEEN**

**PRAGNESH JITENDRA PATEL ..... APPLICANT**

**AND**

**ISMAIL RAHIMTULLAH TRUSTEES REGISTERED ..... 1<sup>ST</sup> RESPONDENT**

**SONY HOLDINGS LIMITED ..... 2<sup>ND</sup> RESPONDENT**

**THE JOINT ADMINISTRATORS - SPENCON KENYA LIMITED (UNDER  
ADMINISTRATION) ..... 3<sup>RD</sup> RESPONDENT**

**ASHUTOSH SHARMA ..... 4<sup>TH</sup> RESPONDENT**

*(Being an application for extension of time and leave to file an appeal from a ruling of the Environment and Land Court (B.M. Eboso J.) dated 29th March 2018 in ELC NO. 375 OF 2017)*

**RULING**

1. In the application dated 12<sup>th</sup> February 2025, the applicant, Pragnesh Jitendra Patel seeks, in the main, extension of time and leave to appeal out of time from the ruling dated 29<sup>th</sup> March 2018 by Hon. B. M. Eboso J. of the Environment and Land Court (ELC) in ELC No. 375 of 2017. In the said ruling, the ELC allowed an application by the 1<sup>st</sup> and 2<sup>nd</sup> respondents for vacant possession of premises situate on property known as Rahimtullah Towers, which the 1<sup>st</sup> respondent had leased to the 3<sup>rd</sup> respondent.
2. The 1<sup>st</sup> and 2<sup>nd</sup> respondent had sued the applicant and the 3<sup>rd</sup> and 4<sup>th</sup> respondents alleging breach of the lease, and they sought vacant possession of the suit premises, restoration thereof to its original state, and mesne profits. They also claimed arrears of rent against the 3<sup>rd</sup> and 4<sup>th</sup> respondents and the applicant, the latter two of whom had guaranteed payment of rent under the lease.



3. In the said ruling, the trial court also directed that the matter proceed to formal proof. The matter did proceed as directed in the said ruling, and a judgment dated 25<sup>th</sup> July 2024 was entered by Hon. Lucy N. Mbugua J. against the applicant and his co-defendants, jointly and severally, for Kshs. 22,607,727.
4. The application is expressed to be brought under section 3, 3A, 3B and 7 of the *Appellate Jurisdiction Act*, and rules 4, 5(2)(b), 41, 43, and 49(1) of the Rules of this Court. It is supported by an affidavit sworn by the applicant on 12<sup>th</sup> February 2025.
5. It is the applicant's averment that following the said ruling, his advocates, upon realising that no application for interlocutory judgment had been made by the 1<sup>st</sup> and 2<sup>nd</sup> respondents, filed a statement of defence on 30<sup>th</sup> April 2018. That by an application dated 26<sup>th</sup> January 2022, the applicant sought leave to file an amended defence, an application which was dismissed, the court finding that there was no valid defence on record that could be amended as the statement of defence had been filed out of time and without leave; and that subsequent applications by the applicant to amend the defence and join a third party were dismissed.
6. The applicant avers that the impugned ruling, which directed that the matter proceeds to formal proof, effectively locked him out of the proceedings and resulted in his being condemned unheard. He asks this Court to extend time to appeal the ruling, noting that he has already filed an appeal against the final judgment, but that he needs leave to challenge the interlocutory ruling because it significantly influenced the final outcome of the matter.
7. The 1<sup>st</sup> and 2<sup>nd</sup> respondents oppose the application by an affidavit sworn by Alex Trachtenberg, a director of the 2<sup>nd</sup> respondent, on 9<sup>th</sup> May 2025. The 1<sup>st</sup> and 2<sup>nd</sup> respondents aver that the 3<sup>rd</sup> respondent having vacated the suit premises and restored them as directed in the ruling dated 29<sup>th</sup> March 2018 and the matter having proceeded to formal proof as ordered in the said ruling, the 1<sup>st</sup> and 2<sup>nd</sup> respondents' application dated 7<sup>th</sup> June 2017, which resulted in the said ruling, was spent, and the applicant's appeal rendered otiose. It is their averment that should this Court entertain an appeal from the said ruling, it would be engaging in an academic exercise. Further, that the applicant had neither served a notice of appeal nor a letter bespeaking the proceedings, and had not evinced any intention to appeal against the said ruling. Further, that the application had been filed forty-five  
(45) months after the ruling, and no adequate explanation for the delay had been given.
8. The applicant filed submissions dated 12<sup>th</sup> May 2025 while the 1<sup>st</sup> and 2<sup>nd</sup> respondents filed submissions dated 11<sup>th</sup> May 2025. No response or submissions were filed by the 3<sup>rd</sup> and 4<sup>th</sup> respondents.
9. I have read and considered the application and the affidavit in support and opposition thereto, as well as the respective submissions of the parties. Rule 4 of the Court of Appeal Rules 2022 gives this court the discretion to extend time, on such terms as may be just, that is limited by the Rules for the doing of any act under the Rules. The factors to be considered by the Court on an application for extension of time are well settled- see *Salat v Independent Electoral and Boundaries Commission & 7 others* [2014] KESC 12 (KLR) and *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 if the application is granted; and, finally, the degree of prejudice to the respondent if the orders sought are granted.
10. In *Andrew Kiplagat Chemaringo v Paul Kipkorir Kibet* [2018] KECA 701 (KLR), this Court observed that the law does not prescribe any minimum or maximum period of delay: what matters is that any delay should be satisfactorily explained, and that a plausible explanation is the key that unlocks the Court's discretionary power. In *Bartilol & 3 others v Bartilol & another* [2024] KECA 607 (KLR) the Court held that while its discretion to extend time is unfettered, it must be exercised on terms that are



just, and the Court is also required to consider what prejudice the respondent would suffer should the orders sought be granted.

11. I have also noted the decisions cited by the 1<sup>st</sup> and 2<sup>nd</sup> respondents which emphasise the need to comply with procedural timelines, and the argument that under rule 41 of this Court's Rules, an application for leave to appeal must be filed within fourteen days, and that even a one-day delay must be explained- see *Reliance Bank Ltd (In Liquidation) v Grandways Ventures Ltd & 2 Others* [2007] KECA 18 (KLR) in which it was held that even a single day must be accounted for. In *John Mathenge Gaita v Beth Wahito Wambugu* [2021] eKLR this Court held that:

“By requiring the filing of the appeal within sixty days, Rule 82 lays emphasis on efficiency in the conduct of litigation by limiting the period within which certain steps must be taken towards an appeal. If satisfactory and acceptable explanation for delay is shown, the Court, in exercise of its absolute discretion under Rule 4 may excuse the delay and admit the appeal out of time. It however must be emphasized that delay of even a single day, has to be accounted for otherwise there would be no purpose of having rules prescribing periods within which certain steps have to be taken.

Additionally, there must be some material on which the court can exercise its discretion. If there is some acceptable explanation, the Court might still refuse to extend time, if the delay is substantial and inordinate or if to extend time is likely to cause significant prejudice to the respondent.” (Emphasis added)

12. I agree fully with the sentiments of the Court in the above matter.
13. The application before me is dated 12<sup>th</sup> February 2025 and seeks extension of time and leave to appeal from a ruling rendered on 29<sup>th</sup> March 2018, a delay of close to seven (7) years. The reasons for the delay, as expressed in the applicant's affidavit, appear to be that he was engaged in taking steps to answer the initial claim against him and his co-defendants in the matter: that he had filed a statement of defence on 30<sup>th</sup> April 2018; that he thereafter filed other applications, including one dated 29<sup>th</sup> January 2022 to amend his defence and join a third party, which was dismissed on 16<sup>th</sup> February 2023; and that he continued pursuing applications up to the hearing of the 1<sup>st</sup> and 2<sup>nd</sup> respondents' formal claim, culminating in the judgment dated 25<sup>th</sup> July 2024, against which he has filed an appeal. His case is that his persistent efforts to be heard account for the delay, and that the delay was not a result of indolence.
14. A delay of close to 7 years is long, and a very solid explanation should be advanced to enable the Court exercise discretion in favour of a party. In my view, the reasons advanced for the delay are untenable. The ruling was delivered on 29<sup>th</sup> March 2018. At the time of the ruling, no defence had been filed by the applicant, so an order was made for the matter to proceed for formal proof. While a defence was filed, without leave, on 30<sup>th</sup> April 2018, a month after the ruling, and an application made, in the applicant's lackadaisical manner, four years later on 29<sup>th</sup> January 2022, for its amendment, no effort was made to pursue an appeal against the ruling even after the application for amendment was dismissed on 16<sup>th</sup> February 2023.
15. I am not satisfied that the delay, which in my view is inordinate, has been explained to justify the exercise of discretion in favour of the applicant. The present application is an afterthought.
16. The Court is also required to consider, (possibly), the chances of the appeal succeeding should the application be allowed.

The applicant advances two possible grounds of appeal as entitling him to the exercise of the Court's discretion in his favour. These are that the learned judge erred in directing the suit to proceed to formal



proof when no judgment had been entered against the defendants, and no interlocutory judgment had been sought; and that the trial court failed to acknowledge that the applicant (who was the 2<sup>nd</sup> defendant in the matter), was actively participating in the proceedings and had not opposed the application for vacant possession. Given the low threshold with regard to an arguable appeal, which is that it need not be one that will necessarily succeed but should raise at least one arguable point, perhaps he can be said to have an arguable appeal. However, I note that the trial Court considered the fact that the applicant had not filed a defence at the time the Court rendered its ruling, and did not do so until after a month from the date of the ruling. The arguability of his appeal, I find, is doubtful.

17. In any event, even were the appeal arguable, the jurisprudence of this Court is that where delay is excessive and unexplained, extension of time and leave to appeal should not be granted- see *Aviation Cargo Support Group Ltd v St. Mark Freight Services Ltd* [2015] KECA 688 (KLR) in which this Court upheld the finding of a single judge to that effect.
18. It is my finding, therefore, that the application dated 12<sup>th</sup> February 2025 is devoid of merit. It is hereby dismissed with costs to the 1<sup>st</sup> and 2<sup>nd</sup> respondents.

**Dated and delivered at Nairobi this 28<sup>th</sup> day of November 2025.**

**MUMBI NGUGI**

.....

**JUDGE OF APPEAL**

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

Signed

**DEPUTY REGISTRAR**

