

**IN THE COURT OF
APPEAL AT NYERI**

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

CIVIL APPEAL (APPLICATION) NO. E205 OF

2025

BETWEEN

STEPHEN MAINA MUCHIRI.....APPLICANT

AND

**GRACE WANJIRU GICHARI 1ST
RESPONDENT**

PETER MUCHIRI GAKURU 2ND RESPONDENT

*(Being an application for an extension of time to file an appeal
out of time against the Judgment of the Environment and Land
Court at
Murang'a (L. Gacheru, J.) delivered on 5th June 2025*

in

ELC No. E010 of 2023)

RULING

1. Before the Court is an application by way of a notice of motion dated 21st October 2025, brought under **sections 3A and 3B** of the Appellate Jurisdictions Act, and **rule 4** of the Court of Appeal Rules, 2022, seeking an extension of time to file an appeal out of time, and in the alternative, the record of appeal filed on 3rd October 2025 and served upon the respondent on the 10th October 2025 be deemed as properly

filed and served.

2. The application is predicated on the grounds on the face of the application and rehashed in the supporting affidavit of the applicant, **Stephen Maina Gichari** sworn on 21st October 2025, wherein he stated that judgment was delivered on 9th June 2025; the notice of appeal was lodged on 11th June 2025 and duly served; the letter bespeaking the proceedings and copied to the respondent's counsel is dated 26th June 2025 with a follow up letter dated 21st August 2025; that it took 72 days, from 27th June to 9th September 2025 to obtain the certified copy of the proceedings; the signed decree and notice of appeal were provided on 12th and 23rd September 2025 respectively; upon receipt of the said documents, the applicant prepared, and filed the record of appeal on 3rd October 2025 and served the same on 10th October 2025; the delay is for a period of 97 days, which the applicant submitted is not inordinate in the circumstances; further the intended appeal raises arguable issues as outlined in the draft memorandum of appeal; the applicant averred further that the respondents will not suffer prejudice if time is extended, whereas the applicant stands to suffer irreparable harm and denial of justice if leave is not granted; and that granting the prayers sought will serve the interests of justice.
3. The respondent did not file a response to the application nor submissions.
4. I have considered the application and the affidavit in support. The issues for determination are: whether the court

should grant an extension of time to file and serve the Record of Appeal

out of time, and whether to deem the already filed and served Record of Appeal to have been duly filed and served. **Rule 4** of the Court of Appeal Rules allow this Court to exercise discretion to extend the time limited by the Rules for doing any act authorised or required by the Rules.

5. In **County Government of Mombasa vs. Kooba Kenya Limited (Civil Appeal 130 of 2018) [2019] KECA 221 (KLR)**, the court relied on the case of **Karny Zaharya & Another vs. Shalom Levi. C. Appl. No. 80 of 2018**, where Koome, JA (as she then was) stated:

“Some of the considerations to be borne in mind while dealing with an application for extension of time include the length of the delay involved, the reason(s) for the delay, the possible prejudice, if any, that each party stands to suffer depending on how the court exercises its discretion; the conduct of the parties; the need to balance the interests of a party who has a decision in his or her favour against the interest of a party who has a constitutionally underpinned right of appeal; the need to protect a party’s opportunity to fully agitate its dispute, against the need to ensure timely resolution of disputes; the public interest issues implicated in the appeal or intended appeal; and whether, prima facie, the intended appeal has chances of success or is a mere frivolity. In taking into account the last consideration, it must be born in mind that it is not the role of a single judge to determine definitively the merits of the intended appeal. That is for the full Court if and when it is ultimately presented with the appeal”.

6. Bearing in mind the power donated to the Court by **rule 4** of the Court's Rules, the same ought to be considered against other rules to inform the Court whether the orders sought are necessary. **Rule 77(1) & (2)** provide that a notice of appeal shall be lodged within 14 days. The applicant lodged his notice of appeal on time.

7. **Rule 84** of the rules, on the other hand, requires that: -

(1) Subject to rule 118, an appeal shall be instituted by lodging in the appropriate registry, within sixty days after the date when the notice of appeal was lodged—
(a) a memorandum of appeal, in four copies;
(b) the record of appeal, in four copies;
(c) the prescribed fee;
and (d) security for the costs of the appeal:

Provided that where an application for a copy of the proceedings in the superior court has been made in accordance with sub-rule (2) within thirty days after the date of the decision against which it is desired to appeal, there shall, in computing the time within which the appeal is to be instituted, be excluded such time as may be certified by the registrar of the superior court as having been required for the preparation and delivery to the appellant of such copy.

(2) An appellant shall not be entitled to rely on the proviso to sub-rule (1) unless the appellant's application for such copy was in writing and a copy of the application was served upon the respondent. (Emphasis added)

8. From the record, the notice of appeal was lodged on time, and the letter bespeaking proceedings was copied to the appellant's counsel and was dated 26th June 2025. Since the appeal was not filed within the 60 days provided by **rule 84(1)**, the proviso to the rule applies, as the letter initiating the proceedings was copied to the respondent's counsel. The certificate of delay was issued on 18th September 2025; therefore, the time required for preparing the proceedings is excluded. Time began to run from the 18th of September 2025. The appellant was thus within time when he filed his record of appeal on 3rd October 2025 and served the same on 10th October 2025.
9. Based on the chronology of events, I find the application was unnecessary. As the respondent did not file a response to the application, I make no order for costs.

Dated and delivered at Nyeri this 1st day of December, 2025.

ALI-ARONI

.....
JUDGE OF APPEAL

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

Signed
DEPUTY REGISTRAR