

**IN THE COURT OF
APPEAL AT NAIROBI**

**[CORAM: SICHALE, J.A (IN
CHAMBERS)] CIVIL APPLICATION NO.**

E203 OF 2025 BETWEEN

**PAUL NJAU NJENGA.....APPLICANT
AND
ONE STEP FAMILY GROUP.....RESPONDENT**

(Being an Application for Extension of Time to file a Memorandum of Appeal and service of the same out of time against the judgment of the Environment and Land Court (Angote J), dated 11th April 2024

in

**(Milimani ELC Appeal No. E096 of
2022)**

RULING

1. Before me is the motion on notice dated 26th March 2025, brought pursuant to the provisions of **Order 42 Rule 1, Order 43 Rules**

(1) (f), 2 and (3), Order 51 Rule 1, Rule 50 1 & 5 of Civil Procedure Rules 2010 Sections 3, 3A, 75 (1) (h), 79G, 95 of the Civil Procedure Act, Article 159 (2) (d) of the Constitution of Kenya and all other enabling provisions

of the Law in which **Paul Njau Njenga** (*“the applicant herein”*) has invoked the

jurisdiction of this Court sitting as a Single Judge seeking the following orders:

“i. Spent.

ii. That this Honourable Court be pleased to grant the intended appellant leave to file a Memorandum of Appeal as per its attached draft against the decision and judgment of Judge O.A Angote dated, signed and delivered on 11th day of April in Nairobi at Milimani and Record of Appeal out of time and/or that time for filing and servicing the same be extended.

iii. That this Honourable Court be pleased to give such orders and directions as it may deem fit and just.

iv. That the costs of this application be provided for.”

2. The motion is supported on the grounds on the face of the motion and an affidavit sworn by the applicant who deposed *inter alia* that he was dissatisfied with the impugned judgment that was delivered virtually on 11th April 2024 and that as such, he was not able to hear clearly the contents of the same.
3. He further deposed that he tried severally to reach the registry to supply him with a copy of the judgment in vain and that on 19th April 2024, he applied to be supplied with a copy of the

same, which had never been done to the date of filing the application.

4. he further deposed that on 11th June 2024, he applied to be supplied with certified copies of the proceedings which had again, never been availed and that he had a good appeal with overwhelming chances of success.
5. The motion was opposed vide a replying affidavit sworn on 20th October 2025, by Jane Wanjiku Kamau, a representative of the respondent who deposed *inter alia* that the letters tendered by the applicant dated 19th April 2024 and 11th June 2024, seeking to be supplied with with copies of the judgment and typed proceedings respectively, bore no court stamp or signature and thus were of no probative value.
6. She further deposed that the applicant's long inaction and procedural laxity portray a pattern of abuse of the appellate process as he only moved the court nearly a year later without any credible justification.
7. It was submitted by the applicant that the necessary documents to enable him file the appeal had not been availed by the Superior Court to date and that further he had an arguable appeal.
8. On the other hand, it was submitted for the respondent that

the applicant had not made out a proper case for special
indulgence

as the delay herein was inordinate and unexplained and that the proposed appeal lacked merit and that allowing the instant motion would occasion grave prejudice to the respondent.

9. I have carefully considered the motion, the grounds thereof, the supporting affidavit, the replying affidavit, the rival submissions by the parties, the cited authorities, and the law.

10. The principles upon which this Court exercises its discretion pursuant to Rule 4 to extend time or not have now taken a well-beaten path. The Court has wide and unfettered discretion in deciding whether to extend time or not. However, in exercising its discretion, the Court should do so judiciously.

11. See **PATEL V WAWERU AND 2 OTHERS [2003] KLR 361 at pp.**

362-3 where this Court had the following to say in respect to Rule 4 of the Court of Appeal Rules:

“This is a matter in which the learned single Judge was called upon to exercise his unfettered discretion under rule 4 of the Rules of this Court. All that the applicant was required to do was to place sufficient material before the learned single Judge explaining the reason for what was clearly an inordinate delay. How does a single Judge exercise his discretion” In LEO SILA MUTISO V. ROSE HELLEN WANGARI MWANGI - Civil

Application no. NAI. 251 of 1997 this Court stated:-

“It is now settled that the decision whether or not to extend the time for appealing is essentially discretionary. It is also well settled 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”

12. Before I delve into the merits or otherwise of the instant motion, I note that the provisions of the Civil Procedure Rules that the applicant has cited are not applicable in applications of this nature.
13. Be that as it may, I note the applicant is in person. Additionally, pursuant to the provisions of Article 159 of the Constitution of Kenya 2010, Courts are enjoined to administer justice without undue regard to procedural technicalities. Consequently, I am inclined to overlook these procedural lapses and focus on substantive justice.
14. Turning to the merits or otherwise of the instant motion, and as regards the length of the delay, the impugned judgment was delivered on 11th April 2024, whereas the instant motion was filed

on 26th March 2025, there has therefore been a delay of about **11 months**, which I do not consider to be inordinate.

15. Turning to reasons proffered for failing to file the appeal on time, it was contended by the applicant that the judgment was delivered virtually and he was not able to hear clearly the contents of the same, and that on 19th April 2024, he applied to be provided with a copy of the judgment which had not been provided to date.

16. I consider the reasons given for failing to file the appeal on time to be plausible/reasonable, and more so given the fact that the applicant is in person.

17. Given the circumstances of this case, I am of the considered opinion that the delay herein has been sufficiently explained to the satisfaction of this Court.

18. As to the arguability or otherwise of the intended appeal, I cannot make a determination of this issue sitting as a Single Judge, and I will therefore not delve further on the same.

19. Finally, on prejudice, I am satisfied that the applicant will stand to suffer prejudice if the instant motion is not allowed, as he will have been completely shut out from the seat of justice.

20. Taking into totality all the circumstances of this case, I am of the considered view that the applicant has demonstrated and satisfied the existence of the principles for consideration in the exercise of my unfettered discretion pursuant to Rule 4 of this Court to extend time.

21. Accordingly, the applicant's motion dated 26th March 2025, is merited and the same is hereby allowed as prayed.

22. The applicant shall proceed to file and serve the Notice and Record of Appeal within a period of **30 days** from the date of this ruling, failure to which these orders shall stand vacated.

23. The costs of this motion shall abide the outcome of the intended appeal.

It is so ordered.

Dated and delivered at Nairobi this 5th day of December 2025.

F. SICHALE

.....
**.... JUDGE OF
APPEAL**

*I certify that this is a
True copy of the original
Signed*
DEPUTY REGISTRAR