

**IN THE COURT OF
APPEAL AT NAIROBI**

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

E193 OF 2025 BETWEEN

KIMITI OLE NKAANGI.....APPLICANT
AND
DAVID MUTUKU KILONZI.....1ST
RESPONDENT PRISCILLA K. MUTUKU.....
.....2ND RESPONDENT CHIEF LAND
REGISTRAR.....3RD RESPONDENT HON.
ATTORNEY GENERAL.....4TH RESPONDENT

(Being an Application for Extension of Time to lodge a Notice of Appeal out of time against the judgment of the Environment and Land Court (Angote J), dated 13th April 2018

in

**(Machakos ELC Case No. 412 of
2012)**

RULING

- 1. Kimiti Ole Nkaangi** (*“the applicant herein”*) has vide a motion on notice application dated 25th March 2025, brought under **Rule 4 of the Court of Appeal Rules and Sections 1A, 1B and 3A of the Appellate Jurisdiction Act** sought the following orders:

“i. THAT applicant herein be granted leave to lodge a Notice of Appeal seeking to challenge the

judgment/decrece granted by Hon. Mr. Justice Angote on 13th April 2018 in Machakos Elc Case No. 412 of 2012 out of the time limited by Rule 77 of the Court of Appeal Rules.

ii. THAT the costs of this application be in the applicants intended appeal.”

2. The motion is supported on the grounds on the face of the motion and an affidavit sworn by Peter O Ngoge, the advocate who has the conduct of this matter on behalf of the applicant, who deposed *inter alia* that he formally came on record for the applicant on 17th September 2018, after the notice of motion dated 20th August 2018 which was filed by the law firm of Kabatia & company advocates (the applicants previous advocates), was allowed by Justice Angote.
3. He further deposed that the applicant was not notified of the delivery of judgment on 13th April 2018 and that as a result of the said lack of notification, he was prevented from lodging a Notice of Appeal to challenge the impugned judgment.
4. There was no response on part of the respondents despite having been served with copies of the application and the hearing notice on 26th March and 14th October 2025

respectively.

5. I have carefully considered the motion, the grounds thereof and the supporting affidavit.
6. 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.
7. See **Mwangi vs. Kenya Airways Limited (2003) KLR 486** where this Court stated thus:

“Over the years, the Court has set out guidelines on what a single Judge should consider when dealing with an application for extension of time under Rule 4 of the Rules. For instance, in Leo Sila Mutiso V Rose Hellen Wangari Mwangi (Civil Application No. Nai 255 of 1997 (unreported), the Court expressed itself thus;

“It is now well settled that the decision whether or not to extend 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.”

8. In the instant case and as regards the length of the delay, the impugned ruling was delivered on 13th April 2018, whereas the instant motion was filed on or about 25th March 2025.
9. There has therefore been a delay of about **7 years**, which delay is no doubt inordinate.
10. Turning to reasons proffered for failing to file the appeal on time, it was contended by the applicant that he was not notified of the delivery of the impugned judgment hence the delay in filing the intended appeal on time.
11. I do not consider the reasons given for the delay to be reasonable/plausible for the following reasons; firstly, despite the applicant's advocates stating that they formally came on record for the applicant on 17th September 2018, **5 months** after delivery of the impugned judgment, there has been no explanation as to why it took them another 7 years to file the instant motion.
12. Secondly, save for the applicant stating that he was not notified of the delivery of the impugned judgment, he does not state

when he eventually became aware of the same. The court further notes

there were numerous correspondences from the applicant's former advocates requiring the applicant to furnish his former advocates with instructions, which letters elicited no response from the applicant, and the only logical inference that can be inferred is that the applicant had lost interest in the matter.

13. Further, the Certificate of Delay dated 21st March 2025 that the applicant seeks to rely on is in respect to the ruling delivered on 5th July 2019 and is therefore not applicable in the instant matter.

14. Given the circumstances of this case, I do not consider the reasons given for the delay to be reasonable/plausible and ultimately therefore, I am of the considered opinion that the delay herein has not been sufficiently explained to the satisfaction of this Court.

15. 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.

16. Finally on prejudice, the applicant has not demonstrated to the satisfaction of this Court, the prejudice that he stands to suffer if the instant motion is not allowed.

17. Taking into totality all the circumstances of this case, I am of the considered view that the applicant has not 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.

18. Accordingly, the applicant's motion dated 25th March 2025, is without merit and the same is hereby dismissed in its entirety with no order as to costs.

It is so ordered.

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

F. SICHALE

JUDICIARY

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

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

DEPUTY REGISTRAR