

**IN THE COURT OF APPEAL  
AT NAIROBI**

**(CORAM: W. KARANJA, J.A. (IN CHAMBERS))**

**CIVIL APPEAL (APPLICATION) NO. E417 OF 2021**

**BETWEEN**

**SIMON WAMBUA MUKULA.....1<sup>ST</sup> APPLICANT**  
**RAPHAEL MUTINDA MULINGE.....2<sup>ND</sup>**  
**APPLICANT FREDRICK YUMBYA.....**  
**3<sup>RD</sup> APPLICANT CHRISTINE MAVINDU.....**  
**.....4<sup>TH</sup> APPLICANT JESCA**  
**MUMBI.....5<sup>TH</sup> APPLICANT**  
**FRANCIS MUTIA MWANGA.....6<sup>TH</sup>**  
**APPLICANT RICHARD MUTHUI WAMBUA.....7<sup>TH</sup>**  
**APPLICANT**  
**JOSEPH KIVWEAA NDUNDU.....8<sup>TH</sup>**  
**APPLICANT NGUU NDONGA.....**  
**...9<sup>TH</sup> APPLICANT STEPHEN MWAKYA MANG'ATU 10<sup>TH</sup>**  
**APPLICANT**  
**STEPHEN MAITHYA KAGWE .....11<sup>TH</sup>**

**APPLICANT AND**

**THE HON. ATTORNEY GENERAL.....1<sup>ST</sup>**  
**RESPONDENT KENYA NATIONAL HIGHWAY**  
**AUTHORITY.....2<sup>ND</sup> RESPONDENT THE PRINCIPAL**  
**SECRETARY,**  
**MINISTRY OF LANDS, HOUSING AND**  
**URBAN DEVELOPMENT.....3<sup>RD</sup>**  
**RESPONDENT THE CHIEF LAND REGISTRAR.....**  
**....4<sup>TH</sup> RESPONDENT**

*(Being an application for extension of time and leave to serve a notice  
of appeal and record of appeal against the judgment, decree and  
ruling of the Environment and Land Court (J. Angote, J.) dated 28<sup>th</sup>  
May 2021*

*in*

**ELC Case No. 206 of 2018**

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**R U L I N G**

1. The applicant has moved this Court under **Rule 4** of the **Court of Appeal Rules** for leave to serve the notice of appeal and

record of appeal out of time.

2. The application is premised on the grounds on its face and on the supporting affidavit sworn by the appellant's learned counsel Mr. Erick Mutua on 12<sup>th</sup> August 2021.
3. Learned counsel deposes that the notice of appeal was filed on time on 8<sup>th</sup> June 2021. Unfortunately, at the time, Covid 19 had struck and the same came with the protocol that suspended physical filing or service of documents. Counsel, therefore, had to wait for the copy of the notice of appeal to be sent to him by email to enable him serve a copy on the respondents.
4. The signed copy was received from the court on 30<sup>th</sup> June 2021 and the same was served on the respondent the very following day, on 1<sup>st</sup> July 2021, and it was received under protest on account of late service. We note that the applicants' counsel had requested for the certified proceedings and judgment of the court on 4<sup>th</sup> June 2021, which was within the timelines prescribed by the **Court of Appeal Rules**. The respondents were, therefore, aware that the notice of appeal had already been lodged even before they were served.
5. The 2<sup>nd</sup> respondent has, nonetheless, opposed the application vide the replying affidavit sworn by learned senior counsel Prof. Albert Muma (SC). Learned counsel deposes that the suit before the ELC was dismissed for "extreme want of

prosecution” after it remained

in court for a long time without the applicant moving the court. Counsel contends that his client will be prejudiced if the application is allowed.

6. I have considered the application before me and the principles that guide this Court in dealing with applications for extension of time as set out in a plethora of decisions from this Court.

See *Fakir*

*Mohammed -vs- Joseph Mugambi & 2 others [2005] eKLR (Civil Application No. Nai. 332 of 2004)* where the Court held that;

***“The exercise of this Court’s discretion under Rule 4 has followed a well-beaten path since the stricture of “sufficient reason” was removed by amendment in 1985. As it is unfettered, there is no limit to the number of factors the court would consider so long as they are relevant. The period of delay, the reason for the delay, (possible) the chances of the appeal succeeding if the application is granted, the degree of prejudice to the respondent if the application is granted, the effect of delay on public administration, the importance of compliance with time limits, the resources of the parties, whether the matter raises issues of public importance-are all relevant but not exhaustive factor.”***

See also *Mwangi -vs- Kenya Airways Ltd (2003) KRL 486.*

7. Having done so, I appreciate that the notice of appeal was filed on time; it was emailed to the Court for lodgment in time. There is evidence that the slight delay involved was from the court side. I also appreciate that the Court was then grappling with and adapting to unusual circumstances caused by Covid 19, and the Court cannot be blamed for that. In any event, I note that the letter bespeaking proceedings was served on the respondents within time and they were aware of the intended appeal. The delay involved in service was, in my considered view, not inordinate. The reasons given for the delay are plausible.
8. Ultimately, I am persuaded that the applicant deserves the exercise of my discretion in his favour. I allow the application and grant the orders as prayed. The notice of appeal, already served on the respondents is deemed as having been served within time; the record of appeal if already served is also deemed to have been served on time.
9. Each party will bear its own costs of the application.

**Dated and delivered at Nairobi this 3<sup>rd</sup> day of December 2025.**

**W. KARANJA**

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

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

**Signed**

**DEPUTY REGISTRAR.**