

**IN THE COURT OF
APPEAL AT NYERI**

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

CIVIL APPEAL (APPLICATION) NO. E121 OF

2025

BETWEEN

SILAS KIBITI.....APPLICANT

AND

SARAH KITHIKA.....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 Meru (Nzili, J.) delivered on 15th May, 2024

in

ELC E003 OF 2023 (O.S.)

RULING

1. Before the Court is an application by way of a notice of motion dated 19th May 2025, brought under **rules 4, 41, 43, 44, 45 and 49 of the Court of Appeal Rules 2022**, seeking an extension of time to file an appeal out of time.
2. The application is predicated on the grounds on the face of the application which have been rehashed in the supporting affidavit of the applicant, **Silas Kibiti** sworn on 19th May 2025 where he deposed that he acts in person; judgment was delivered on 15th May 2024 and where the Court found in favor of the respondent; the was aggrieved by the

judgment; he filed an application in this Court for extension of time dated 27th

August 2024, which application was allowed on 5th December, 2024; in compliance with the said order he prepared his Record of Appeal dated 31st January 2025 and filed it on the 3rd of February 2025; inadvertently, he filed the said appeal in a wrong file, **Nyeri Civil Appeal No. E073 of 2024** (Samson Kiberetu vs. Silas Kibiti), in which he is a party and is active before the court.

3. He stated further, he discovered the anomaly as having not received any response from the Court registry. He enquired and learnt that he had filed his Record of Appeal in a wrong file; he prays that this Court extends the time to file the appeal in the correct file; as it is the interest of justice and fairness that the application be allowed.
4. In response the respondent filed a replying affidavit sworn on 25th July 2025, in which she averred that the applicant filed a similar application for extension of time to file an appeal via Civil **Application No. E084 of 2024**, which resulted in a ruling where the applicant was granted leave to file his notice of appeal within 14 days and to file his record of appeal within 14 days of filing the notice of appeal; yet she had not been served with either a notice of appeal or the record of appeal.
5. The respondent further stated that despite leave to the appeal out of time being granted to the applicant, there is no evidence on record that the applicant made an effort to file his appeal between the 5th December 2024 and 19th May

2025, and no

explanation for the delay for a period of close to 5 months has been given.

6. The respondent further averred that the applicant is a vexatious litigant abusing the court process; the averments made at paragraphs 5, 6, 7, 8 and 9 are mere fabrication of facts as they are not supported by evidence; it is trite law that ignorance of the law is no defence; and she prays that the application be dismissed with costs.
7. The applicant filed a supplementary affidavit sworn on 2nd September 2025, in response to the respondent's replying affidavit and stated that though the respondent challenged the annexures to the supporting affidavit, the same are properly marked and identifiable; and the challenge is an attempt to invite the court to consider technicalities to defeat justice.
8. In his submissions dated the 25th of November 2025, the applicant rehashed the averments in his affidavit, restating that he is a layman acting in person and has done the best he could for his application dated 19th May 2025; he admitted there was another application for extension of time in application No. E084 of 2024 and orders made therein, which he complied with and has explained the reasons for the delay; he maintained that it is not true that the delay in filing the appeal has not been explained.
9. Learned counsel for the respondent filed submissions and a

list of authorities, both dated 24th November 2025, and
contended

that the applicant failed to act on the leave granted, having gone to slumber after the 5th December 2024 ruling. Furthermore, the applicant obtained a certificate of delay on 30th January 2025 but did not file the current motion until 19th May 2025, without offering any explanation for the delay.

10. Counsel emphasised that the discretion to extend time is not automatic, and an applicant must provide sufficient evidence to convince the Court why the appeal was not filed within time. Citing the principles set out in ***Mwangi vs. Kenya Airways Ltd [2003] KRL 486*** (as discussed in *Andrew Kiplagat Chemaringo vs. Paul Kipkorir Kibet [2018] KECA 701 (KLR)*), arguing that the court typically considers: the length of the delay, the reason for the delay, the chances of the appeal succeeding, and the degree of prejudice to the respondent.
11. Additionally, drawing from ***Wasike vs. Swala [1984] KLR 591***, he submits that an applicant must show the merit in their appeal, that the extension will not cause undue prejudice, and that the delay has not been inordinate. Counsel argued that the applicant has failed to meet these criteria and that the application is hopeless in all aspects.
12. Counsel further asserted that ignorance of the law is not a defence. He urged, finally, that the applicant's initial failure to properly have his annexures signed by a Commissioner for Oaths in the supporting affidavit, a lapse the applicant

acknowledged but claimed was due to being a layman,
despite subsequently marking an annexure properly in the

supplementary affidavit is not excusable. Based on the above factors he urged the Court to dismiss the application with costs.

13. I have considered the application, the affidavit in support, the replying affidavit, the supplementary affidavit and the submissions. The issue for determination is whether the applicant deserves an order extending the time within which to file an appeal. **Rule 4** of the Court of Appeal Rules governs the extension of time. The Rule allows this Court to exercise discretion to extend the time limited by the Rules for doing any act authorized or required by the Rules.
14. 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”.

In **Athuman Nusura Juma vs. Afwa Mohamed Ramadhan, CA No. 227 of 2015**, this Court stated thus, on that issue:

“This Court has been careful to ensure that whether the intended appeal has merits or not is not an issue determined with finality by a single judge. That is why in virtually all its decisions on the considerations upon which discretion to extend time is exercised, the court has prefixed the consideration whether the intended appeal has chances of success with the word “possibly”.”

Similarly, in **Abdul Azizi Ngoma vs. Mungai Mathayo [1976] Kenya LR 61, 62**, this Court held:

“We would like to state once again that this Court’s discretion to extend time under rule 4 only comes into existence after ‘sufficient reason’ for extending time has been established and it is only then that other considerations such as the absence of any prejudice and the prospects or otherwise of success in the appeal can be considered.”

15. This Court, in its earlier order, extended the time within which to file an appeal. The applicant has explained that he filed the record of appeal pursuant to the said order, but in the wrong file, only to discover, after failing to obtain progress on his appeal, that he had done so in the wrong file.

The order for extension of time was issued on the 5th of December, 2024. He

was required to file the notice of appeal within 21 days of the order and serve it within 14 days. The record of appeal was to be filed 14 days after the notice of appeal.

16. The respondent has challenged the applicant in that the record of appeal said to have been filed in the wrong file was filed outside the time directed by the Court. Further, it is argued that it was not demonstrated what effort was put in place to file the record between the 5th of December 2024 and the 19th of May 2025. As will be seen from the preceding paragraph, the respondent's interpretation of the order is incorrect. Further, the computation of time as prescribed by the Court of Appeal Rules and the Court of Appeal (Organisation and Administration) Act for the time in question, places the filing in the wrong file within the time prescribed.

Rule 3 of our Rules states that:

Any period of time fixed by these Rules or by any decision of the Court for doing any act shall be computed in accordance with the following provisions—

- (a) the period of days from the happening of an event or the doing of any act or thing shall be deemed to be exclusive of the day in which the event happens or that act or thing is done;***
- (b) if the last day of the period is a Sunday or a public holiday (in this rule referred to as "excluded days"), the period shall include the next following day, not being an***

excluded day;

- (c) where any act or proceeding is directed or allowed to be done or taken on a certain day, then if that day happens to be an excluded day, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards, not being an excluded day;**
- (d) where any act or proceeding is directed or allowed to be done or taken within any time not exceeding six days, excluded days shall not be reckoned in the computation of time; and**
- (e) unless the Court otherwise directs, the period of the Christmas recess shall not be reckoned in the computation of time.**

Section 26 of the Court of Appeal (Organisation and Administration) Act provides as follows on the Court's recess:

(1)The Court shall go on recess annually as follows-

- (a) from the Wednesday before Good Friday to the Wednesday after Easter Monday, inclusive;**
- (b) from 1st August to 15th August, inclusive; and**
- (c) from 21st December to 12th January, inclusive.**

17. In my view, the appellant has sufficiently explained why the record of appeal was not filed as directed in the Court's earlier order. Further, I think that, in the circumstances of the case, the delay cannot be said to be inordinate.

The Court, in its earlier order, found that the applicant had met the necessary thresholds for an extension of time. I agree with the Court's earlier finding, and I need not rehash the same.

18. On whether the applicant's annexures were properly before the Court, it is true that the annexures in the supporting affidavit do not bear the stamp of the Commissioner for Oaths as they ought to have. He, however, rectified the anomaly in the supplementary affidavit. As it happened, the replying affidavit was not commissioned! Is this a case of "removing a speck from a neighbour's eye before noticing the plank in yours"? Both errors, in my view, are essential procedural requirements that border on technicalities and remind the court that justice ought to be administered without undue regard to technicalities.
19. I therefore allow the application and direct the applicant to: -
 - a. File and serve the notice of appeal in the appropriate file within the next seven (7) days from the date of this order.**
 - b. File and serve the record of appeal in the correct file 14 days from the date of this order.**
20. Costs of the application to abide by the outcome of the appeal.

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