



Nzuve (Suing as the Legal Representative of the Estate of Reuben Nzuve Mwangangi - Deceased) v Musau & another (Civil Appeal (Application) E102 of 2025) [2025] KECA 2128 (KLR) (5 December 2025) (Ruling)

Neutral citation: [2025] KECA 2128 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPEAL (APPLICATION) E102 OF 2025
F SICHALE, JA
DECEMBER 5, 2025**

BETWEEN

**AGNES NZASI NZUVE APPLICANT
SUING AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF REUBEN
NZUVE MWANGANGI - DECEASED**

AND

**MUKENE MUSAU 1ST RESPONDENT
NDELE MUTUKU 2ND RESPONDENT**

(Being an Application for Extension of Time to file and serve an Appeal out of Time in an intended appeal against the judgment of the Environment and Land Court (C.G Mbogo J), dated 8th February 2022 in Makueni ELC Case No. 40 of 2019)

RULING

1. By the Motion on Notice dated 21st February 2025, brought pursuant to the provisions of Rule 4 and 102 (1) of the [Court of Appeal Rules](#), Order 24 Rule 7 of the [Civil Procedure Rules 2010](#) and Section 3A of the [Appellate Jurisdiction Act](#), Article 159 (2) of the [Constitution](#) of Kenya, 2010 and all other enabling provisions of the law, Agnes Nzasi Nzuve (hereinafter “the applicant”) has invoked the Jurisdiction of this Court sitting as a Single Judge seeking the following orders:
 - “a. Spent.
 - b. That this Honourable Court be pleased to substitute Agnes Nzasi Nzuve, the Legal Representative of the deceased Reuben Nzuve Mwangangi in place of the deceased.



- c. That the Honourable Court be pleased to extend the time within which the applicant may file and serve the Notice of Appeal and substantive Appeal against the Ruling and Orders of Hon Justice Mr. C G Mbogo issued and delivered on 8th February 2022 in ELC Civil Case No. 40 of 2019-Makueni.
 - d. That the Honourable Court be pleased to order the Land Registrar, Makueni County to provide the applicant with the official searches of land title number MakueniMutiswa/1878 and Makueni/ Mutiswa/1879 on payment of the requisite fees.
 - e. That costs of this application abide in the outcome of the intended appeal.”
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 on 8th February 2022, the main suit was dismissed for non-attendance of the plaintiff, Reuben Nzuve Mwangangi (the deceased), who died on 29th December 2021, whilst the hearing and determination of the suit was still pending in court.
 3. She further deposed that as at the time that the ruling was delivered the deceased’s family took time to process the deceased’s death and that being aggrieved with the ruling of the High Court dated 8th February 2022 declining to reinstate the suit, she was still desirous of appealing against the same and further, that on 4th March, 2022, she obtained Letters of Administration *Ad Litem*, authorizing her to appeal to the Court of Appeal, a process that took time due to legal and procedural requirements.
 4. She thus prayed that she be substituted with the deceased plaintiff to allow her prosecute the matter to its final determination; that the delay in filing the appeal was due to unavoidable circumstances and was not deliberate nor inordinate and further, that the respondents would not suffer any prejudice since they were in possession of the suit property.
 5. There was no response on the part of the respondents despite having been served with a copy of the application and the hearing notice on 7th March and 6th October 2025 respectively.
 6. It was submitted for the applicant that this Court has wide and unfettered discretion pursuant to Rule 4 of the *Court of Appeal Rules 2022*, to extend time for filing an appeal which discretion is exercised judiciously and that in the instant case, the applicant was of advanced age and had been battling illness which made it difficult for her to instruct counsel or follow up on the filing of the appeal within the stipulated period.
 7. It was further submitted that during the subsistence of the suit, the deceased fell ill and unfortunately died before the ruling was delivered and that by the time the applicant recovered from his demise, the time within which to file the appeal had lapsed and as such the delay was beyond her control and was not deliberate.
 8. Regarding prejudice, it was submitted that the respondents would not suffer any undue prejudice that could not be compensated by way of costs and further, that the respondents were presently in possession of the suit property.
 9. I have carefully considered the motion, the grounds thereof, the supporting affidavit, the applicant’s submissions, 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 *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.”

12. In the instant case and as regards the length of the delay, the impugned ruling was delivered on 8th February 2022, and the instant motion was filed on or about 21st February 2025.
13. There has therefore been a delay of about 3 years, which I consider to be inordinate.
14. Turning to reasons proffered for failing to file the appeal on time, it was contended that the applicant was of advanced age and had been battling illness which made it difficult for her to instruct counsel or follow up on the filing of the appeal within the stipulated period.
15. It was further submitted during the subsistence of the suit, the deceased fell ill and unfortunately died before the ruling was delivered and that by the time the applicant recovered from his demise, the time within which to file appeal had lapsed and as such, the delay was beyond her control and not deliberate.
16. It was further submitted that the delay in filing the appeal was also occasioned by the negligence of the applicant’s former advocate who failed to take appropriate steps within time and that it was trite law that mistakes of counsel should not be visited upon an innocent litigant.
17. I consider the reasons given for failing to file the appeal on time not to be plausible/reasonable as there was no evidence adduced to the effect that the applicant was of advanced age and the document that has been annexed to the motion showing that the applicant has been ailing is dated 30th January 2025, long after the impugned judgment was delivered.
18. Additionally, the contention by the applicant that her former advocates were negligent thus further contributing to the delay in this matter is not supported by any evidence.
19. Given the circumstances of this case, I consider the reasons given for the delay not 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.
20. 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.
21. Finally on prejudice, it has not been demonstrated the prejudice that the applicant will stand to suffer if the instant motion is not allowed.
22. 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.



23. Accordingly, the applicant's motion dated 21st February 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

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JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR

