



REPUBLIC OF KENYA



**Gudka v Sharma & another (Civil Application E305 of 2025)  
[2025] KECA 2307 (KLR) (19 December 2025) (Ruling)**

Neutral citation: [2025] KECA 2307 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAIROBI  
CIVIL APPLICATION E305 OF 2025  
F SICHALE, JA  
DECEMBER 19, 2025**

**BETWEEN**

**VIRENDRA RAMJI GUDKA ..... APPLICANT**

**AND**

**ESTATE OF RAMESH SHARMA ..... 1<sup>ST</sup> RESPONDENT**

**VIOLET MARANGA T/A AS THE LEGAL REPRESENTATIVE OF RAMESH  
SHARMA ADVOCATE ..... 2<sup>ND</sup> RESPONDENT**

*(Being an Application for Extension of Time to file Record of Appeal  
against the Ruling of the High Court of Kenya (F. Mugambi J),  
dated 16th May 2023 In (Milimani Misc Appl No. E762 of 2021)*

**RULING**

1. Before me is the motion on notice dated 26<sup>th</sup> February 2025, brought pursuant to the provisions of Article 159 (2) (d) of *the Constitution* of Kenya, sections 3, 3A and 3B of the *Appellate Jurisdiction Act*, Rules 4, 31, 39 (b), 41, 43 and 47 of the Court of Appeal Rules 2010 and all other enabling provisions of the Law in which Virendra Ramji Gudka (“the applicant herein”) seeks the following orders;
  - “i. Spent.
  - ii. THAT this Honourable Court be pleased to grant leave to the applicant herein to file their Record of Appeal out of time against the ruling of the Honourable Lady Justice Freda Mugambi given at Nairobi on 16<sup>th</sup> May 2023.
  - iii. That the Record of Appeal dated 26<sup>th</sup> February 2025, which is annexed hereunder to this application be deemed to be duly filed.”



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, being dissatisfied with the ruling delivered by F. Mugambi J, on 16<sup>th</sup> May 2023, his advocates lodged a Notice of Appeal dated 24<sup>th</sup> May 2023 and served the same on the respondents.
3. That, on 16<sup>th</sup> May 2023, his advocates lodged a letter with the registry requesting to be furnished with certified copies of the proceedings, and further did a reminder on 19<sup>th</sup> January 2024.
4. That, despite multiple follow-ups with the registry on the issuance of the typed and certified copy of the decree and proceedings, the same were issued on 6<sup>th</sup> September 2024, further delaying the process of putting together the record of appeal.
5. He thus deposed that that the delay in filing the record of appeal was not intentional, but was rather caused by delays in receiving copies of the certified proceedings and decree from the high court, despite several follow ups on issuance of the same, which delay should not be visited on an innocent litigant who stands to suffer incredible prejudice should the appeal be considered improperly lodged.
6. The motion was opposed vide a replying affidavit sworn on 13<sup>th</sup> June 2025, by the 1<sup>st</sup> respondent who deposed inter alia that despite the applicant contending that he had lodged a letter dated 16<sup>th</sup> May 2023, requesting for certified copies of the decree and proceedings, he had not served a copy of the same on the respondents as required by Rule 84 (2) of the Court of Appeal Rules.
7. She further de[posed that the applicant was guilty of material non- disclosure of facts and was deliberately misleading the Court into believing that the certificate of delay filed before it relates to the proceedings, in order to hoodwink the Court into granting them leave to appeal out of time and that further, the certificate of delay was dated 6<sup>th</sup> September 2024, yet the instant application was filed on 26<sup>th</sup> February 2025, which was more than 5 months after the certificate of delay was issued to the applicant.
8. It was submitted for the applicant that the instant application should be allowed on the basis that the applicant was unable to file the intended appeal due to delays in receiving the certified copies of the ruling and proceedings from the High Court registry and that as such, the applicant had good and sufficient cause since the delay was caused by the High Court registry.
9. On the other hand, it was submitted for the respondent that the application offends the doctrine of laches and was barred by inordinate, inexcusable and unexplained delay spanning over 21 months from the date of the ruling rendering it an abuse of the court process and that the applicant did not serve letters bespeaking typed proceedings upon, them which was a fatal non- compliance with Rule 84 of the Court of Appeal Rules, stripping the applicant of any purported exclusion of time and vitiating the entire application.
10. It was further submitted that the applicant had not discharged the onerous burden of explaining each day of the inordinate delay to the satisfaction of this Honourable Court.
11. For this proposition, reliance was placed on the Supreme Court decision of Nicholas Kiptoo Arap Korir Salat vs. Independent Electoral and Boundaries Commission & 7 Others [2014] eKLR (Petition No. 3 of 2014).
12. 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.



13. 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.
14. See Patel vs. 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.”

15. In the instant case and as regards the length of the delay, the impugned ruling was delivered on 16<sup>th</sup> May 2023, whereas the instant motion was filed on 26<sup>th</sup> February 2025. There has therefore been a delay of about 1 year and 9 months, which is no doubt inordinate.
16. Turning to reasons proffered for failing to file the appeal on time, it was contended by the applicant that the same was occasioned by delays in receiving copies of the typed judgment and proceedings from the high court and that it was not until 6<sup>th</sup> September 2024 that the same was availed.
17. Despite the Certificate of Delay dated 6<sup>th</sup> September 2024, indicating that the applicant was informed that the proceedings were ready for collection on 5<sup>th</sup> September 2024, the instant application was not filed until 26<sup>th</sup> February 2025, a delay of another 5 months, and no explanation has been forthcoming from the applicant for this delay.
18. Ultimately, therefore, I consider the reasons given for failing to file the appeal on time not to be plausible/reasonable, and given the circumstances, I am of the considered opinion that the delay herein has not been sufficiently explained to the satisfaction of this Court.
19. 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 make no further comment regarding the same.
20. Finally, on prejudice, I am not satisfied that the applicant will stand to suffer any prejudice if the instant motion is not allowed.
21. 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.
22. Accordingly, the applicant’s motion dated 26<sup>th</sup> February 2025, is without merit and the same is hereby dismissed in its entirety with costs to the respondents.

It is so ordered.



**DATED AND DELIVERED AT NAIROBI THIS 19<sup>TH</sup> DAY OF DECEMBER 2025.**

**F. SICHALE**

.....

**JUDGE OF APPEAL**

I certify that this is a True copy of the original

Signed

**DEPUTY REGISTRAR**

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