

**IN THE COURT OF  
APPEAL AT  
NAIROBI**

**(CORAM: GATEMBU, J.A. (IN CHAMBERS))**

**CIVIL APPLICATION NO. NAI. E119 OF  
2025**

**BETWEEN**

**LUCY NJERI KAMANDE.....APPLICANT  
AND**

**AYUB MWANGI KIARII.....RESPONDENT**

*(Being an application for extension of time to institute an appeal out of time, against the Judgment of the High Court of Kenya at Kiambu (Bahati Mwamuye, J.) dated 27<sup>th</sup> June 2024*

*in*

***HCCA No. E425 of 2023)***

**\*\*\*\*\***

**\*\*\* RULING**

1. In her application dated 28<sup>th</sup> February 2025, the applicant, Lucy Njeri Kamande, seeks an order that she be granted leave to appeal out of time against the judgment delivered on 27<sup>th</sup> June 2024 by the High Court at Kiambu in High Court Civil Appeal No. E425 of 2023; that the record of appeal be admitted; and that the proposed appeal be heard on a priority basis.
2. In that judgment, the High Court partially allowed the respondent's appeal and ordered the applicant to effectively refund the sum of Kshs. 1,087,000.00 to the

respondent which she had apparently received as purchase price for

the property known as Dagoretti/Kinoo/T.384/37 she had sought to sell to the respondent without legal capacity for want of grant of letters of administration. She was ordered to refund that amount within thirty (30) days from the date of the judgment.

3. The background in brief, is that the parties entered into an agreement for sale dated 17<sup>th</sup> July 2020 under which the respondent agreed to purchase the said property Title Number Dagoretti/Kinoo/T.384/37 from the applicant. The title to that property was apparently in the name of Samuel Kiambuthi Kinyanjui (Deceased), who had reportedly sold it to the applicant's deceased husband, Jeremiah Kamande Mburu. A revocation agreement was subsequently entered into on 13<sup>th</sup> January 2021.
4. The respondent filed suit before the Magistrates Court at Kikuyu, being Kikuyu CMCC No. E036 of 2022, seeking to validate the said revocation agreement. However, in a judgement delivered on 31<sup>st</sup> October, 2023 the trial court dismissed the respondent's suit, finding that the sale agreement was void from the onset because the applicant (the defendant in the suit) could not sell what did not belong to her. The trial court also found that the revocation agreement hinged on a void sale agreement could not be enforced. The applicant's counterclaim succeeded, with the court ordering the immediate release of the title for the property to her.

5. The respondent was dissatisfied with the judgment of the trial magistrate and appealed to the High Court at Kiambu, complaining that the trial magistrate failed to recognize the "agreement to revoke" and failed to order the repayment of the part of the purchase price paid to the applicant; that the trial magistrate considered the applicant's witness statement despite her non-attendance during the defence hearing; and that the trial magistrate found that the applicant lacked capacity to transfer the property due to lack of a grant for letters of administration, yet still directed the title document be returned to the applicant without ordering repayment of the purchase price.
6. Having heard that first appeal, the learned Judge of the High Court delivered the judgement the subject of intended appeal on 27<sup>th</sup> June 2024. The Judge partially allowed the appeal as already stated having concluded that the sale agreement was void from the onset due to the applicant's lack of capacity. Invoking the principle that equity does not allow unjust enrichment, the Judge ordered the applicant to refund the amount of Kshs. 1,087,000.00 she had received from the respondent to restore each party to their former positions.
7. It is against that background that the applicant presented the application now before me seeking the prayers already enumerated. In the grounds appearing on the

face of the application, it is averred that “the appellant  
filed and

served the Notice of Appeal on 20<sup>th</sup> August 2024 and the letter requesting certified proceeding on 21<sup>st</sup> August 2024.” However, in the affidavit in support of the application, **Steve David Kipruto**, the advocate representing the applicant deponed that “the appellant has filed a notice of appeal dated 12<sup>th</sup> of July 2024, which was duly served upon the respondent in accordance with the Civil Procedure Rules.” He depones further in that affidavit that “on 20<sup>th</sup> of August 2024” he on behalf of the applicant wrote to the Deputy Registrar at Kiambu High Court, seeking the issuance of the certified proceedings. The copy of the Notice of Appeal exhibited bears the date 12<sup>th</sup> July 2024 and is indicated to have been lodged in the High Court at Kiambu on 19<sup>th</sup> July 2024.

8. For a start, under Rule 77 of the Court of Appeal Rules, judgment having been delivered on 27<sup>th</sup> June 2024, the notice of appeal should have been filed within 14 days, that is by 11<sup>th</sup> July 2024 at the latest. Assuming it was filed on 12<sup>th</sup> July 2024, it was late. Furthermore, under Rule 79 of the Court of Appeal Rules, the applicant was required to serve the Notice of Appeal “before or within seven days after lodging...” This again was not complied with as the applicant’s advocates states that it was served on 20<sup>th</sup> August 2024.
9. To benefit from the proviso to rule 84 of the Court of Appeal Rules, the letter bespeaking copies of the

proceedings,

should have been made within 30 days after the decision of the High Court and a copy of that letter should have been served on the respondent. On the face of it, the copy of the letter of 20<sup>th</sup> August 2024, apart from it being outside 30 days, was not copied to the respondent.

10. Although the court has unfettered discretion under Rule 4 of the Court of Appeal Rules to extend time, that discretion should be exercised judicially. In **Fakir Mohamed vs. Joseph Mugambi & 2 Others [2005] eKLR (Civil Application No. Nai. 332 of 2004 (Nyr. 32/04))** the

Court stated 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”.***

11. Similarly in **Nicholas Kiptoo Arap Korir Salat vs. IEBC & 7 Others, Supreme Court Application No. 16 of 2014** the Supreme Court of Kenya pronounced that extension of time is not a right of a party but an equitable remedy available to a deserving party at the discretion of the court; that the party seeking extension of time has

the burden to lay a basis to the satisfaction of the court;  
that extension of

time is a consideration on a case to case basis; and that delay should be explained to the satisfaction of the court. Other considerations include whether there will be prejudice suffered by the respondents if the extension is granted; and whether the application is brought without undue delay. Public interest is also a relevant consideration.

12. Against those principles, I have considered the application, the affidavit in support and in opposition, the respective written submissions highlighted before me by learned counsel **Mr. David Kipruto** for the applicant and learned counsel **Mr. Delbert Ochola** for the respondent. The question is whether the applicant has made out a case or presented material based on which the Court can exercise its discretion in her favour.
13. I am not satisfied that an explanation, least of all a satisfactory explanation, has been given for the delays involved. The plea by counsel for the applicant that “the applicant has acted diligently in attempting to comply with the court’s requirements” is not supported as there is no tangible demonstration in that regard.
14. Apart from the delays and lapses to which I have referred, the present application was not made until 28<sup>th</sup> February 2025. No explanation or plausible explanation for that delay is given.

15. By the time the applicant applied for a copy of the proceedings from the High Court on 20<sup>th</sup> August 2024, the thirty days provided under Rule 84 within which that should have been done had already lapsed and the certificate of delay dated 2<sup>nd</sup> February 2025 “lodged on 18<sup>th</sup> February 2025” exhibited is in my view not helpful at all.

16. All in all, I have no material or grounds on the basis of which to exercise the Court’s discretion in favour of the applicant. The application dated 28<sup>th</sup> February 2025 fails and is hereby dismissed with costs to the respondent.

**Dated and delivered at Nairobi this 19<sup>th</sup> day of December 2025.**

**S. GATEMBU KAIRU, FCI Arb, C.Arb.**

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

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

*Signed*

**DEPUTY REGISTRAR**