

**IN THE COURT OF
APPEAL AT NAIROBI**

**[CORAM: SICHALE JA (IN
CHAMBERS)] CIVIL APPLICATION**

NO. E255 OF 2025

BETWEEN

MARIANNE NYOKABI KAMOTHO.....APPLICANT

AND

EUNICE WAMBUI KAMOTHO.....RESPONDENT

(Being an Application for Extension of Time to lodge a Notice of Appeal in an intended Appeal against the Ruling and Orders of the Environment and Land Court (Angote J), dated 20th March 2025

in

(Nairobi ELC Case No. E300 of 2024)

RULING

1. **Marianne Nyokabi Kamotho** (*“the applicant” herein*), has vide the motion on notice dated 17th April 2025, brought pursuant to the provisions of **Rule 4 of the Court of Appeal Rules 2022**, invoked the jurisdiction of this Court sitting as a Single Judge seeking the following orders:

“i. Spent.

ii. THAT leave do issue for the applicant to file and

***serve a Notice of Appeal out of time against
the***

ruling delivered in Nairobi ELC Case No. E300 of 2024 on 20th March 2025.

iii. THAT the Notice of Appeal dated 15th April 2025 and filed on 19th April 2025 be deemed as properly filed.

iv. THAT costs of or incidental to this motion do abide the outcome of the 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 she was partly aggrieved by the ruling delivered by *Angote J*, on 30th March 2025, in Nairobi ELC Case No. E300 of 2024, and that she was completely unaware of delivery of the ruling by the court, and she only became aware of the same on 10th April 2025, when the 14 days necessary for filing the appeal had long expired.
3. That she had frantically written to her then advocates on record seeking to know the status of the matter in vain, and out of utter frustration, she started to look for alternative legal representation pursuant to which she managed to engage the present counsel on record, who managed to secure the impugned ruling on 14th April 2025.
4. She further deposed that the delay in lodging the Notice of

Appeal

was not inordinate and that the instant motion had been brought

without any delay, and that further no prejudice would be occasioned to the respondent if the instant motion was allowed.

5. The motion was opposed vide a replying affidavit sworn by the respondent on 23rd May 2025, who deposed *inter alia* that contrary to the applicant's assertions, her counsel was present in court on 20th March 2025, when the impugned ruling was delivered and that accordingly, the allegations that the applicant only became aware of the ruling on 10th April 2025, was false and misleading.
6. She further deposed that a litigant has the duty to zealously follow up on the status of their case and, as such, failure to file the Notice of Appeal within the requisite time was not excusable.
7. It was submitted for the applicant that the delay herein, which was 14 days was neither inordinate nor inexcusable as the applicant had laid bare before the Court an adequate explanation for the delay namely; being unaware of delivery of the ruling despite her best efforts and that upon realizing the lapse on 10th April 2025, she acted with dispatch in bringing this application.
8. On prejudice, it was submitted that the respondent stands to

suffer no prejudice that cannot be cured by an award of costs and that, on the contrary, the applicant risked being locked out on the

appellate process altogether, which would be an affront to the principle of fair hearing pursuant to the provisions of Article 50 of the Constitution.

9. On the other hand, it was submitted for the respondent that there had been a delay of 28 days and that the reason advanced for failing to file the Notice of Appeal on time namely; that the applicant only learnt of the ruling on 10th April 2025, was not only false and misleading as the applicant's advocates were in court on 20th March 2025, when the ruling was delivered.

10. It was further submitted that granting of the orders sought would greatly prejudice the respondent as the applicant was intent on keeping this matter in court for as long as it takes, so as to frustrate the respondent's right to enjoy quiet possession of the subject property.

11. 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.

12. The principles upon which this Court exercises its discretion pursuant to Rule 4 to extend time or not are now old hat. 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.

13. See **Patel vs. Waweru & 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”

14. In the instant case and as regards the length of the delay, the impugned ruling was delivered on 20th March 2025, whereas the instant motion was filed on or about 17th April 2025. There

has

therefore been a delay of **28 days**, which I do not consider to be inordinate.

15. Turning to reasons proffered for failing to file the Notice of Appeal on time, it was contended that the same was due to the fact that the applicant was unaware of delivery of the ruling despite her frantic efforts to enquire the status of the same from her advocates.

16. I have looked at screenshots of messages attached to the supporting affidavit in support of the motion by the applicant to her then advocate, which messages elicited no response. In view of the above, I consider the reasons given for failure to file the appeal on time to be reasonable.

17. Given the circumstances, I consider the reasons given for failing to file the appeal on time to be plausible/reasonable and ultimately therefore, I am of the considered opinion that the delay herein has sufficiently been explained to the satisfaction of this Court.

18. 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 into the issue.

19. Finally, on prejudice, I am satisfied that the applicant will suffer prejudice if the instant motion is not allowed as she will have been completely ousted from the seat of justice.

20. Taking into totality all the circumstances of this case, I am of the considered view that the applicant has 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.

21. Accordingly, the applicant's motion dated 17th April 2025, is merited and the same is hereby allowed as prayed.

22. The applicant shall proceed to file the intended appeal within **30 days** from the date of this ruling, failure to which these orders shall stand vacated.

23. The costs of this motion shall abide the outcome of the intended appeal.

It is so ordered.

Dated and delivered at Nairobi this 19th day of December 2025.

F. SICHALE

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

*I certify that this is
a True copy of the*

original

Signed

DEPUTY REGISTRAR