



REPUBLIC OF KENYA



**Mwangi v Mwangi & 4 others (Civil Application E167 of 2025)
[2025] KECA 2224 (KLR) (19 December 2025) (Ruling)**

Neutral citation: [2025] KECA 2224 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NYERI
CIVIL APPLICATION E167 OF 2025
A ALI-ARONI, JA
DECEMBER 19, 2025**

BETWEEN

JULIUS NJUGUNA MWANGI APPLICANT

AND

HANNAH WARIGIA MWANGI 1ST RESPONDENT

KARIUKI KAMAU MBUKI 2ND RESPONDENT

WAMBUI MWANGI 3RD RESPONDENT

SARAH WAMAITHA 4TH RESPONDENT

THE LAND REGISTRAR, MURANGA 5TH RESPONDENT

(Being an application for extension of time to file and serve the record of appeal out of time in an intended appeal from the Judgment of the Environment and Land Court at Murang'a (Gacheru, J.) delivered on 29th January 2025 in ELC No. E009 of 2021)

RULING

1. Before the Court is an application by way of a notice of motion dated 31st October 2025, brought under rules 4, 43, 44(1), 55(1) and 84 of the Court of Appeal Rules 2022 ('the Rules'), seeking an extension of time to file and serve the record of appeal out of time.
2. The application is predicated on the grounds on the face of the application and the applicant's affidavit sworn on 31st October 2025, stating that the impugned judgment was delivered on 29th January 2025 during which time, the applicant fell ill and out of abundance of caution his advocates filed a notice of appeal on his behalf on 20th February, 2025; an application to be supplied with certified copies of proceedings and judgment was made on 21st March 2025; copies of the certified proceedings were released to the applicant's advocates on 16th April 2025 while a copy of the certified judgment was



released on 6th May 2025; the applicant is 82 years old and since the month of February 2025 has been unwell and thus unavailable to give further instructions to his advocates and make the necessary payments in order to facilitate the preparation of the record of appeal; failure to file and serve the record of appeal on time was not deliberate; it is in the interest of justice and fairness that the orders sought be granted to enable the applicant ventilate his substantive appeal.

3. The 1st respondent has filed grounds of opposition dated 2nd December 2025, this document is alien to this Court and I will not make reference to the same. In any event matters raised therein are well captured in the replying affidavit of the 1st respondent, Kariuki Kamau Mbuki sworn on 2nd December 2025, wherein he stated that the allegation that the applicant suffers from eye problems, asthma and arthritis is false and is meant to mislead the court as there is no proof; the notice of appeal was filed on 20th February 2025 in contravention of rule 77(2) of the Court of Appeal Rules, which was out of time as the impugned judgment was delivered on 29th January 2025, and no leave was sought for extension of time; the same was served upon the 1st respondent's advocates on 28th March 2025, which was out of time contrary to the mandatory provisions, the 1st respondent's advocates have invoked rules 77, 79 and 86 of the Rules and have filed Nyeri Court of Appeal Civil Application No. E050 of 2025, seeking that the notice of appeal dated 10th February 2025 be struck out for being filed and served out of time; the applicant only applied for typed proceedings on 14th March 2025, served it on the 1st respondent's advocates on 28th March 2025 way out of prescribed time, judgment having been delivered on 29th January 2025 the applicant has not annexed copies of certified proceedings and judgment; the certified proceedings and judgment were furnished to the applicant's advocates on 16th April 2025 and 6th May 2025, it has not been explained why the intended record of appeal was not filed within sixty days, that is on or by 6th July 2025 in compliance of rule 84(1) of the Rules; the present application was filed on 10th November 2025; it has not explained the lengthy inordinate delay in filing the application and as such the applicant is guilty of laches.
4. Learned counsel for the applicant has filed submissions dated 11th December 2025 and a list of authorities dated 15th December 2025 and opines the sole issue for the court's determination is whether to grant the applicant an extension of time to file and serve the record of appeal. In support counsel refers to the established principles for granting extension of time, citing the case of *Leo Sila Mutiso vs. Hellen Wangari Mwangi* [1999] 2 EA 231 and *Fakir Mohammed vs. Joseph Mugambi & 2 Others* [2005] eKLR, where the court held that the factors to be considered are; the length of the delay, the reason for the delay, the chances of the appeal succeeding, the degree of prejudice to the respondent if the application is granted, the effect of delay on public administration and the importance of compliance with time limits. A plausible and satisfactory explanation for the delay is key.
5. On the reason for delay, counsel explains that at the time the judgment was delivered (29th January 2025), the applicant was unwell and suffering from old age ailments that severely affected his mobility. His advocates filed a notice of appeal out of caution after learning of his health situation and that the appeal has very high chances of success. The applicant faults the High Court for disregarding clear evidence of fraud in the transfer of the deceased person's land and granting the extension would allow the Court of Appeal to review the evidence and correct this error. The delay in filing the record of appeal was not deliberate, the applicant has satisfied the required parameters, and it would be in the wider interest of justice and fairness to grant the extension to enable him to ventilate his appeal.
6. Learned counsel for the 1st respondent has filed submissions dated 10th December 2025 and his primary argument is that the applicant failed to comply with the mandatory time limits for filing and serving the notice of appeal, rendering the entire appeal process defective.



7. According to counsel, the applicant has not filed any pleading to show the court that he has sought an extension of time to lodge and serve the notice of appeal out of time. He emphasizes that the 1st respondent filed a notice of motion dated 1st April 2025 (and amended on 30th April 2025) to strike out the applicant's notice of appeal for the blatant breach of rules 77 and 79. He asserts that this application was filed and served within the 30 days stipulated by rule 86.
8. Counsel further challenges the applicant's claim of being unwell and submits that no medical document whatsoever has been annexed in support of the ailment claim. He submits that even if the applicant was ailing, this could not have prevented him from giving his advocates instructions to comply with the strict rules of the Court of Appeal immediately. Counsel argues that the applicant is guilty of laches in filing the application for extension of time for the record of appeal. He explains that the applicant's advocates applied for proceedings on 14th March 2025. Copies of proceedings and judgment were supplied on 16th April 2025, and 6th May 2025, however, the present application was not filed until 10th November 2025. Counsel concludes that since the applicant has not come to court with "clean hands" and the notice of appeal is defective, the court should not exercise its discretion under rule 4 of the Rules.
9. I have considered the application, the affidavit in support and the submissions by the parties. The issue for determination is whether to grant leave to file and serve the record of appeal out of time. Rule 4 of the Rules governs extension of time. The Rule allows the Court to exercise discretion to extend the time limited by the Rules for doing any act authorized or required by the Rules. In *Salat vs. Independent Electoral and Boundaries Commission & 7 others* (Application 16 of 2014) [2014] KESC 12 (KLR) (Civ) (4 July 2014) (Ruling) the Supreme Court had this to say on the issue of extension of time:

“... it is clear that the discretion to extend time is indeed unfettered. It is incumbent upon the applicant to explain the reasons for the delay in making the application for extension and whether there are any extenuating circumstances that can enable the Court to exercise its discretion in favour of the applicant.

... we derive the following as the underlying principles that a Court should consider in exercising such discretion:

1. extension of time is not a right of a party. It is an equitable remedy that is only available to a deserving party, at the discretion of the Court;
2. a party who seeks extension of time has the burden of laying a basis, to the satisfaction of the Court;
3. whether the Court should exercise the discretion to extend time, is a consideration to be made on a case- to- case basis;
4. where there is a reasonable [cause] for the delay, [the same should be expressed] to the satisfaction of the Court;
5. whether there will be any prejudice suffered by the respondents, if extension is granted;
6. whether the application has been brought without undue delay; and
7. whether in certain cases, like election petitions, public interest should be a consideration for extending time.”



10. In *Dele alias Gazi Mvoi vs. Awadh & Another* (Civil Application E166 of 2023) [2024] KECA 723 (KLR) (21 June 2024) this Court stated; -

The law as regards the principles to be applied by the court when considering an application brought under rule 4 of the Court of Appeal Rules are now well settled. The starting point is that the Court has unfettered discretion when considering such an application. However, like all judicial discretions, the Court has to exercise the same discretion upon reasons and not upon the whims of the Court.”

11. From the chronology of events as set out by the applicant’s counsel and averred to by counsel for the respondent, the applicant was late in following all the steps laid down by the rules. I will briefly summarise the events:

- a. Notice of appeal was filed on 14th February 2025 - late by two days.
- b. Notice of Appeal was served upon the respondent’s counsel on 28th March 2025- notice 44 days late.
- c. Certified copies of the proceedings were applied for on 21st March 2025 - 21 days late.
- d. Certified copies of the proceedings and judgement were collected on 16th April 2025 and 6th May 2025 yet this application was filed on 10th November 2025- 6 months after.

12. Though there is claim of sickness that is said to have caused the delay, I do not find the explanation given to be plausible. No medical records were attached to show the gravity of sickness. It is also not explained why counsel on record after filing the notice of appeal did not take other steps within stipulated time lines. All the above make it seem as though the appeal is an afterthought. Having made the above observation, it is notable that the notice of appeal was filed out of time and served late upon the respondent. The notice of appeal initiates an appeal, the applicant having failed to seek for an extension of time to filing and serve the notice of appeal, it means that there is no proper appeal before the court and as such the application seeking to file and serve a record of appeal out of time has no legs to stand on. Granting the prayers would thus be futile.

In *Odera t/a AJ Odera & Associates vs. Machira t/a Machira & Co Advocates* (Civil Appeal 161 of 1999) [2013] KECA 208 (KLR) (11 October 2013), this Court referred to *Pepco Construction Company Limited vs. Carter & Sons Limited Nairobi* CA No. 80 of 1979 (UR) wherein this Court observed that:

“A notice of appeal is what gives this court jurisdiction in any appeal. It is a primary document in terms of rule 85(1) of the Rules. A record of Appeal must contain a valid copy of the notice of appeal. The omission to include a valid copy renders the appeal incompetent....; the case of *Joseph Limo & 86 others versus Ann merz* Civil Application No.295 of 1998 Omollo JA made observation that:-“A notice of appeal is the document which initiates an appeal it indicates who is aggrieved by the decision or part of the decision of the Superior Court and is or are therefore appealing in the case of *Parsi Anjumani versus Mushin Abdulkarim Ali* Civil Application Nai 328 of 1998 (UR) there was observation that:-“a notice of appeal is a primary document within the meaning of rule 85(1) of the rules ...”



In Patrick Kiruja Kithinji vs. Victor Mugira Marete Civil Application 48 of 2014, this Court stated as follows; -

“In our view whether or not an appeal is filed on time goes to the jurisdiction of this Court. It is trite that this Court has jurisdiction to entertain appeals filed within the requisite time and/or appeals filed out of time with leave of the Court. To hold otherwise would upset the established clear principles of institution of an appeal in this Court. Consequently, we find that an appeal filed out of time is not curable under Article 159.”

13. In the circumstances the only option as things stand is to dismiss the application with costs to the respondent.

DATED AND DELIVERED AT NYERI THIS 19TH DAY OF DECEMBER, 2025.

ALI-ARONI

.....

JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR

