



**Mwirichia v Gitonga (Civil Application E169 of 2025)  
[2025] KECA 2225 (KLR) (19 December 2025) (Ruling)**

Neutral citation: [2025] KECA 2225 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAIROBI  
CIVIL APPLICATION E169 OF 2025  
A ALI-ARONI, JA  
DECEMBER 19, 2025**

**BETWEEN**

**WILSON KIRIMI MWIRICHIA ..... APPLICANT**

**AND**

**STANLEY GITONGA ..... RESPONDENT**

*(Being an application for extension of time to file and serve the record of appeal from the Judgment of the Environment and Land Court at Meru (Mboya, J.) delivered on 5th June 2025 in ELCA No. E054 of 2024)*

**RULING**

1. Before the Court is an application by way of a notice of motion dated 17<sup>th</sup> November 2025, brought under rule 4 of the Court of Appeal Rules (“the Rules”), seeking leave to file and serve the record of appeal out of time within a period of 21 days.
2. The application is predicated on the grounds on the face of the application and the supporting affidavit of the applicant sworn on 17<sup>th</sup> November 2025, stating that judgment was delivered on 5<sup>th</sup> June 2025; the applicant lodged a notice of appeal on the 10<sup>th</sup> of June 2025; applied for the certified typed proceedings on 17<sup>th</sup> June 2025; certified copies of the proceeding were available on the 2<sup>nd</sup> September 2025; the certificate of delay was issued on 3<sup>rd</sup> November 2025; the delay to file the record is due to administrative backlog issues of typing proceedings and proof reading; the delay cumulatively is for 2 months and 28 days.
3. The application is opposed by way of a replying affidavit of the respondent Stanley Gitonga Muraa, sworn on 26<sup>th</sup> November 2025, in which he avers that the application is misconceived, is an abuse of the court process and ought to be dismissed in limine; the respondent filed Githongo ELC Case No. 31 of 2015, where the court held that he was the lawful registered owner of LR. No. Abothuguchi/Mariene/1393; the applicant did not appeal the said judgment; the applicant later filed Githongo ELC



Case No. E002 of 2023, and the court found that the suit was res judicata; dissatisfied with the said judgment, the applicant filed Meru ELC Appeal E054 of 2024, and in a judgment delivered on 5<sup>th</sup> June 2025; the court rightfully found that the applicant's suit was res judicata and an abuse of the court process hence it dismissed the appeal with costs to the respondent; the delay in filing the intended appeal has not been satisfactorily explained and is an afterthought; the appeal is frivolous and has no arguable grounds as it merely seeks to re-litigate matters conclusively determined by the superior court and the lower court; litigation must come to an end; as any further delay will prejudices him as he is entitled to the fruits of his judgments.

4. Neither party filed submissions.
5. I have considered the application, the affidavit in support and the replying affidavit. The issue for determination is whether to grant the applicant leave to file and serve the record of appeal out of time.
6. Rule 4 of the Rules allows the Court to exercise discretion to extend the time limited by the Rules for doing any act authorized or required by the Rules. The court is expected to exercise the unfettered discretion judiciously not with sympathy, capriciously or whimsically while at the same time considering, the length of time, the reasons for the delay, and the likely prejudice to the other.

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.”
7. The same principle is enunciated in *Towett vs. Kibaru & Another* (Civil Application E191 of 2025) [2025] KECA 1650 (KLR) (9 October 2025) as follows:

“Rule 4 of the Court of Appeal Rules, 2022 empowers this Court to extend time for the doing of any act authorized or required by the Rules. The power is discretionary and



should be exercised judicially upon good cause being shown. Some of the factors to bear in mind include the period of delay; the reason for the delay; the degree of prejudice the respondent stands to suffer; justice should be administered without undue regard to procedural technicalities and that justice should not be delayed. (see Njeri Njoroge v Joseph Maina Gichuhi & another [2018] eKLR)”

8. The Court has not been shown the letter bespeaking the proceedings, neither has it been explained why counsel for the applicant did not copy the letter to the respondent’s counsel in line with the proviso to rule 84 which would have allowed filing of the record of appeal within 30 days of the receipt of the proceedings and the certificate of delay.
9. Though having raised the concern above I am minded of the holding in *Abdirahman Abdi also known as Abdirahman Muhumed Abdi vs. Safi Petroleum Products Ltd. & 6 Others*, Civil Application No. Nai. 173 of 2010, where a notice of appeal was served on the respondent out of time and without leave of the court, upon being asked to strike it out, this Court (Omolo, Bosire and Nyamu, JJ.A.) observed that; -

“The overriding objective in civil litigation is a policy issue which the court invokes to obviate hardship, expense, delay and to focus on substantive justice...

In the days long gone the court never hesitated to strike out a notice of appeal or even an appeal if it was shown that it had been lodged out of time regardless of the length of delay. The enactment of Sections 3A and 3B of the *Appellate Jurisdiction Act*, Cap 9 Laws of Kenya, and later, Article 159 (2) (d) of *the Constitution* of Kenya, 2010, changed the position. The former provisions introduced the overriding objective in civil litigation in which the court is mandated to consider aspects like the delay likely to be occasioned, the cost and prejudice to the parties should the court strike out the offending document. In short, the court has to weigh one thing against another for the benefit of the wider interests of justice before coming to a decision one way or the other. Article 159 (2) (d) of *the Constitution* makes it abundantly clear that the court has to do justice between the parties without undue regard to technicalities of procedure. That is not however to say that procedural improprieties are to be ignored altogether. The court has to weigh the prejudice that is likely to be suffered by the innocent party and weigh it against the prejudice to be suffered by the offending party if the court strikes out its document. The court in that regard exercises judicial discretion.”

10. I find that the applicant has explained the short delay sufficiently. I have also taken cognizance that delays have become order of the day for various reasons including lack of adequate resources, volume of work etc. and as a result preparation of proceedings take some time to be ready and certified.
11. In the circumstances the application is allowed. The record of appeal be filed and served within 21 days of the date of this ruling.
12. Costs will abide by the outcome of the appeal.

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

**ALI-ARONI**

.....

**JUDGE OF APPEAL**

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



Signed

**DEPUTY REGISTRAR**

