

**IN THE COURT OF APPEAL  
AT NAIROBI**

**(CORAM: TUIYOTT, JA (IN CHAMBERS))**

**CIVIL APPLICATION NO. NAI E214 OF 2025**

**CORNER PLACE INVESTMENT LIMITED.....APPLICANT**

**AND**

**TERESIA WAIRIMU KIRIMA .....1<sup>ST</sup>  
RESPONDENT NAIROBI CITY COUNTY GOVERNMENT .....  
2<sup>ND</sup> RESPONDENT CHIEF LAND REGISTRAR  
..... 3<sup>RD</sup> RESPONDENT MINISTRY OF LAND,  
HOUSING &  
URBAN DEVELOPMENT ..... 4<sup>TH</sup> RESPONDENT**

*(Being an application for leave to lodge and file an appeal out of time  
against the judgment of the Environment and Land Court at Nairobi (L.  
Mbugua, J.) delivered on 13<sup>th</sup> July 2023*

*in*  
***ELC Petition No. 45 of 2017)***

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**RULING**

[1] The notice of motion dated 7<sup>th</sup> February 2025, mainly predicated upon the provisions of Rule 4 of The Court of Appeal Rules, 2022, seeks two prayers: that the firm of SOW Advocates LLP be granted leave to come on record on behalf of the applicant/appellant; and that this Honourable Court be pleased to extend time and grant leave to file an appeal out of time.

[2] The judgment sought to be impugned was delivered on 13<sup>th</sup> July 2023.

The applicant evincing an intention to challenge it, filed a notice of appeal within time but not the appeal itself. In an affidavit sworn by **Abdirizak Ibrahim**, a director of the applicant company, on 7<sup>th</sup>

February 2025, he blamed the delay in dereliction of duty by the previous advocates of the applicant, notwithstanding various inquiries made by the company about the status of the appeal. On realizing that an appeal has not been lodged, the applicant appointed the firm of SOW Advocates LLP to take up conduct of the matter.

- [3] Another reason given for the delay is that there was difficulty in accessing the physical court file so as to obtain the necessary relevant documents and typed proceedings, and the applicant has since obtained a certificate of delay to that effect. It is further asserted that the intended appeal raises substantial issues for determination and that no prejudice will be occasioned on the respondents if the application is allowed.
- [4] Only the 1<sup>st</sup> respondent responded to the application through her affidavit sworn on 14<sup>th</sup> November 2025. Setting out a chronology of events, she deposes that a consent for change of advocates between Kimani Muriithi Advocates and SOW Advocates LLP was signed on 28<sup>th</sup> October 2024; the applicant was issued with certified copies of typed proceedings on 20<sup>th</sup> November 2024 and a certificate of delay dated 5<sup>th</sup> February 2025 made out.
- [5] It is contended for the 1<sup>st</sup> respondent that the applicant had sixty (60) days from 5<sup>th</sup> February 2025 to lodge the appeal which therefore expired on or about 7<sup>th</sup> April 2025. It is therefore asserted that the current application dated 7<sup>th</sup> February 2025 was filed prematurely, when the statutory period had not lapsed. It is argued

that this Court

cannot extend time that is still running and it therefore lacks jurisdiction to grant the orders sought and the present application is incompetent, *ultra vires* and a nullity.

- [6] This Court has read and understood the submissions filed on behalf of the parties. The application presents a rather confounding set of circumstances where the applicant has filed an application dated 7<sup>th</sup> February 2025 seeking to extend time for filing of an appeal out of time and the opposing respondent asserts that, as at the date of the application, time for filing the appeal had not lapsed.
- [7] This confusion partly emanates from the contents of the certificate of delay itself. While it certifies that the time taken by the trial court to prepare and supply the certified copies of proceedings and judgment was from 14<sup>th</sup> July 2023 to 20<sup>th</sup> November 2024, the certificate of delay was itself issued on 5<sup>th</sup> February 2025. When, then, does the clock begin to run for purposes of lodging the appeal?
- [8] The direct answer is to be found in the proviso to Rule 84 of the Court of Appeal Rules. In computing the time within which the appeal is to be instituted, the time certified by the Registrar of the superior court as having been required for preparation and delivery of the certified copies of proceedings and judgment shall be excluded. In this event, 495 days from 14<sup>th</sup> July 2023 to 20<sup>th</sup> November 2024. Clearly time would start to run on 21<sup>st</sup> November 2024 and not 5<sup>th</sup> February 2025 when the certificate of delay was issued.

[9] Reckoning time from 21<sup>st</sup> November 2024, and excluding from such computation the Christmas Recess (Rule 3(e)) (21<sup>st</sup> December, 2024 to 13<sup>th</sup> January, 2025), the 60-day period for lodging an appeal would lapse on or about 13<sup>th</sup> February 2025. Still the notice of motion dated 7<sup>th</sup> February 2025 was brought 6 days early, a tad early.

[10] Since the record of appeal was filed alongside the application, it would have been properly filed on time if the applicant had not misapprehended the Rule and miscalculated time. In the interest of justice, the applicant's misapprehension of the law and miscalculation will be excused. In particular, because the 1<sup>st</sup> respondent may not suffer prejudice if that course is followed.

[11] Ultimately, while I strike out the notice of motion dated 7<sup>th</sup> February 2025 with costs to the 1<sup>st</sup> respondent, I allow the change of advocates and make a further order that the applicant shall properly lodge and serve the record of appeal within 14 days hereof.

**Dated and delivered at Nairobi this 30<sup>th</sup> day of January 2026.**

**F. TUIYOTT**

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

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

***Signed***

**DEPUTY REGISTRAR.**