



REPUBLIC OF KENYA



KENYA LAW
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**Katana v Kipkorir (Civil Application E032 of 2025)
[2026] KECA 81 (KLR) (30 January 2026) (Ruling)**

Neutral citation: [2026] KECA 81 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT MOMBASA
CIVIL APPLICATION E032 OF 2025
AK MURGOR, JA
JANUARY 30, 2026**

BETWEEN

JAMES CHAI KATANA APPLICANT

AND

EVERLYNE CHEPKOSGEI KIPKORIR RESPONDENT

(An application for extension of time to lodge a Memorandum of Appeal and Record of Appeal against the Judgment and Decree of the High Court delivered at Malindi (M. Thande, J.) delivered on 23rd April 2025 in HCFOS No. E003 of 2023)

RULING

1. By a Notice of Motion dated 8th August 2025, brought pursuant to Rule 4 of the Court of Appeal Rules, the Applicant, James Chai Katana seeks to extend the time to lodge the Memorandum of Appeal and Record of Appeal against the Judgment and Decree of the High Court delivered at Malindi on 23rd April 2025 in H.C.F.O.S No.E003 of 2023- *James Chai Katana v Everlyne Chepkosgei Kipkorir* and that the costs of and incidental to this application be provided for.
2. The Notice is brought pursuant to the grounds on its face and the supporting affidavit sworn by Patrick Shujaa Wara, and the written submissions. Counsel for the Applicant contended that the Applicant is aggrieved by the Judgment of the court and intends to appeal against the decision; that the Judgment was delivered on 23rd April 2025 and the Notice of Appeal was lodged on 9th May 2025 and that they applied for certified typed copies of the proceedings and Judgment which were certified on 26th June 2025; that thereafter, a delay in lodging the Memorandum and Record of Appeal within the 60 days from the date of lodging the Notice of Appeal occurred because the Decree was issued on 17th July 2025, by which time the 60 days period had lapsed. It was contended that the Record of Appeal is now ready for filing and the High Court registry is yet to issue a certificate of delay; that the delay is not



inordinate and the Applicant has good chances of succeeding in the appeal. It was further contended that no prejudice would be occasioned to the Respondent in the event the application was allowed.

3. There was no reply from the Respondent who did not also file any written submissions. And when the application came up for hearing, Mr. Shujaa appeared for the Applicant, while there was no appearance for the Respondent though served with the hearing notice.
4. Rule 4 of the [Court of Appeal Rules](#) vests in this Court an unfettered discretion to extend time where the circumstances of the case so demand. It is trite that the discretion, must be exercised judiciously and not arbitrarily, and each case must be determined on its own facts.
5. This Court in the case of *Leo Sila Mutiso v Hellen Wangari* [1989] 2 EA 231 set out the relevant factors to be considered in an application for extension of time that:

“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.”

6. As to whether there was a delay, the Judgment was delivered on 25th April 2025, and the Notice of Appeal was lodged on 9th May 2025, whereupon the Applicant had 60 days within which to file the Memorandum and Record of Appeal, which would have been on 9th July 2025. The Applicant applied for certified typed copies of the proceedings and Judgement on 23rd May 2025. The proceedings were certified on 26th June 2025, though no certificate of delay was provided as this would have enabled the Applicant to exclude the days for preparation of the proceedings from computation of the number of days it took to lodge the Memorandum and Record of Appeal.
7. This application for extension is dated 8th August 2025. Between the date when the Memorandum and Record of appeal should have been filed, that is 9th July 2025 and 8th August 2025, is about 30 days.
8. The next issue to be addressed is whether the Applicant has explained the delay of 30 days. The Applicant indicated that there was a delay in obtaining the Decree, which was not issued until 17th July 2025. Given that the Decree was obtained on 17th July 2025, this would explain the delay upto then. But there is no explanation for the delay between 17th July 2025 and 8th August 2025, when this application was lodged, a period of 22 days.
9. In order for this Court to exercise its discretion to extend time, the Applicant must provide an explanation for the entire period of delay. In this case, the period of 22 days has not been explained. Without any material explaining the delay, upon which to exercise my discretion, I am not satisfied that the delay in filing the Memorandum and Record has been explained.
10. As concerns the success of Applicant’s intended appeal, in view of the decision reached by the trial Judge, I have considered the draft Memorandum, and find that I am unable to discern one way or the other the likely success of the appeal.
11. As the Respondent did not respond to the application, I am not able to discern any likely prejudice to her.
12. In sum, the Notice of motion dated 8th August 2025 fails and is dismissed. As there was no response to the applicant from the Respondent, the Applicant will bear his own costs.



It is so ordered.

DATED AND DELIVERED IN MOMBASA THIS 30TH DAY OF JANUARY, 2026

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JUDGE OF APPEAL

A.K. MURGOR

I certify that this is a True copy of the original

Signed

DEPUTY REGISTRAR

