

**IN THE COURT OF  
APPEAL AT  
NYERI**

**(CORAM: ALI-ARONI, J.A. (IN**

**CHAMBERS) CIVIL APPLICATION NO.**

**E171 OF 2025 BETWEEN**

**JAMES GICHOHI WAMUTITU.....APPLICANT**

**AND**

**GEOFREY GICHUKI WAMUTITU.....RESPONDENT**

*(Being an application for extension of time to file an appeal out of  
time against the Ruling of the High Court at Nyeri (K. Magare, J.)  
delivered on 17<sup>th</sup> October, 2024*

*in*

***Succession Cause No. 76 of 1995)***

\*\*\*\*\*

**RULING**

1. Before the Court is an application by way of a notice of motion dated 12<sup>th</sup> November 2025, brought under **Article 10, 27, 40, 47, 50, 159(2)(d)** of the Constitution, **rules 5(2)(b), 43 & 44** of the Court of Appeal Rules 2022 ('the Rules'), seeking for an extension of time to file an appeal out of time.
2. The application is predicated on the grounds on the face of the application, rehashed in the supporting affidavit sworn

by the applicant on 12<sup>th</sup> November 2025, where he deposes that the deceased herein is his biological father; the impugned ruling

was delivered on 17<sup>th</sup> October 2024; he resides on Land Parcel Aguthi/Gaki/650 and not Land Parcel Aguthi/Gaki/464; relocating to Land Parcel Aguthi/Gaki/464 will be very costly and expensive; the deceased had shown him his portion in Land Parcel Aguthi/Gaki/650; being aggrieved by the ruling he lodged a notice of appeal on 31<sup>st</sup> October 2024; he applied for certified copies of proceedings and judgment which were ready for collection on 3<sup>rd</sup> December 2024; the delay in filing the appeal was not as a result of the applicant's actions as the events were beyond his control, as he filed an application for revocation of Grant dated 23<sup>rd</sup> March 2025, which was dismissed vide a ruling dated 14<sup>th</sup> October 2025.

3. The applicant further avers that the right of appeal is an essential element of the justice system and should not be curtailed without justifiable reasons; he sought leave from the High Court to appeal to this Court, which was declined and he was referred to this Court; the delay occasioned is not so inordinate and is excusable, and the same has been explained; the respondent is unlikely to suffer any prejudice, rather it is the applicant, due to the developments that he has made in Aguthi/Gaki/650 since 1982.
4. In opposing the application, the respondent has filed a replying affidavit sworn on 22<sup>nd</sup> December 2025. He deposes that, if the applicant collected the certified copies of the proceedings on 3<sup>rd</sup> December 2024, he would have been within time to file a memorandum of appeal, but he did

not; he filed the instant

application almost one (1) year later. Further, he contends that the applicant has not explained the reason for the grossly inordinate delay. He states that from 17<sup>th</sup> October 2024, when his application was dismissed, the applicant has been very active in filing at least three applications in the High Court as if the applicant was not interested in filing the intended appeal.

5. He states further that the application filed on 2<sup>nd</sup> August 2023 which was dismissed on 17<sup>th</sup> October 2024, was seeking to review or set aside the orders confirming the grant, it was not seeking revocation of grant; the grant was confirmed after an objection was heard by way of *viva voce* and the parties opted the manner of distribution, the applicant was not a party; that after the grant was confirmed more than 20 years ago nobody expressed dissatisfaction by either appealing or filing a review.
6. He avers that after the grant was confirmed, the respondent has moved on because the transmission is complete; the respondent has sub-divided both parcels of land and the applicant has been part of the process. In compliance with the consented certificate of confirmation of grant, the applicant's land is in LR. Aguthi/Gaki/464; the intended appeal is not arguable and has no chances of success, it is based on a misconceived application that sought to review and set aside a consent judgment entered by parties who are long deceased and that the application should be dismissed with costs.

7. Learned counsel for the applicant has filed submissions, a case digest and list of authorities all dated 5<sup>th</sup> January 2026.

Counsel relies on **rule 4** of the Rules, which grants the Court discretionary power to extend time limits. He submits that a notice of appeal was originally lodged on 31<sup>st</sup> October 2024, shortly after the initial judgment. Delays occurred due to subsequent legal action, including a dismissed summons for revocation of grant in October 2025, and a failed application for leave to appeal in the High Court, in which the applicant was directed to seek relief from this Court. In support of his contention counsel relies on **Leo Sila Mutiso vs. Rose Hellen Wangari Mwangi [1999] 2 EA p231**, where the Court set out the principles to be applied in the exercise of its discretion in the determination of an application under **rule 4**.

8. Counsel asserts the delay was not deliberate or negligent but resulted from efforts to obtain certified proceedings and circumstances beyond the applicant's control. To support this point, he relies on **Andrew Kiplagat Chemaringo vs. Paul Kipkorir Kibet (Civil Application No. 91 of 2017) [2018] KECA 701 (KLR)**, where the Court allowed an extension of time because the applicants offered sufficient reasons for the delay. Counsel also cited the Supreme Court decision of **Nicholas Kiptoo Arap Korir Salat vs. IEBC [2014] eKLR**, where the Court provided the foundational principles for granting an extension of time.
9. Counsel further relies on **John Mwita Murimi & 2 Others vs. Mwikabe Chacha Mwita & Another [2019] KECA 422 (KLR)** where this Court held that under the Law of

Succession Act,



there is no express automatic right of appeal to the Court of Appeal and submits that given the intended appeal emanates from a Succession Cause, therein lies the reason for filing the instant application.

10. The respondent did not file submissions.
11. I have considered the application, the supporting affidavit, the replying affidavit and the submissions by the applicant's counsel. In his concluding paragraph, the applicant's counsel alludes to seeking leave to prefer the appeal. The application contains only one prayer: 'seeking leave to appeal out of time'. In any event that question can only be addressed by a full bench. The issue for determination, therefore, is whether the applicant should be granted an extension of time to file and serve the notice of appeal and record of appeal out of time, and whether the notice of appeal lodged on 31<sup>st</sup> October 2024 may be deemed to have been duly filed.
12. **Rule 4** of the Rules states that; -  

***The Court may, on such terms as may be just, by order, extend the time limited by these Rules, or by any decision of the Court or of a superior court, for the doing of any act authorized or required by these Rules, whether before or after the doing of the act, and a reference in these Rules to any such time shall be construed as a reference to that time as extended.***
13. The issue of extension has been discussed by this Court in

many of its decisions, and the factors to be considered when  
the

question arises are well settled. The Supreme Court too has been emphatic on those considerations. In **Salat vs. Independent Electoral and Boundaries Commission & 7 Others (Application 16 of 2014) [2014] KESC 12 (KLR) (Civ) (4 July 2014) (Ruling)**; it was of the view that in considering an application for extension of time, the Court would consider:

***“16. Discretion to extend time was indeed unfettered.***

***It was incumbent upon the applicant to explain the reasons for delay in making the application for extension and whether there were any extenuating circumstances that could enable the court to exercise its discretion in favour of the applicant.***

***17. The court ought to consider the following principles in exercising the discretion to extend time for filing an appeal:***

- a. Extension of time was not a right of a party. It was an equitable remedy that was only available to a deserving party at the discretion of the court;***
- b. A party who sought extension of time had the burden of laying a basis for it to the satisfaction of the court;***
- c. Whether the court ought to exercise the discretion to extend time, was a consideration to be made on a case-by- case basis;***

***d. Whether there was a reasonable reason for the delay, which ought to be explained to the satisfaction of the court;***

- e. Whether there would be any prejudice suffered by the respondents if the extension was granted;**
- f. Whether the application had been brought without undue delay; and**
- g. Whether in certain cases, like election petitions, public interest ought to be a consideration for extending time”.**

14. This Court in **Abdul Azizi Ngoma vs. Mungai Mathayo [1976] KLR 61, 62**, on its part stated:

**“We would like to state once again that this court’s discretion to extend time under rule 4 only comes into existence after ‘sufficient reason’ for extending time has been established and it is only then that other considerations such as the absence of any prejudice and the prospects or otherwise of success in the appeal can be considered.**  
*(Emphasis added)*

15. The parties are in agreement that the ruling subject of the intended appeal was delivered on the 17<sup>th</sup> of October 2024; the notice of appeal was lodged on 31<sup>st</sup> October 2024, and proceedings collected on 3<sup>rd</sup> December 2024. I note that the letter bespeaking proceedings was not copied, and therefore the 60 days available to appeal commenced on the 31<sup>st</sup> October 2024. The applicant states that leave was denied. He has not

sought leave before this Court; there was an attempt in the submissions to do so, which is untenable.

16. The applicant has two hurdles to surmount: first, leave to appeal and secondly, filing the appeal out of time. The issue of leave is not before me, and I shall not dwell on it; however, it is a factor I must consider in arriving at a decision.
17. The key question to consider is whether the applicant has sufficiently explained the delay between the 17<sup>th</sup> of October 2024 and 12<sup>th</sup> November 2025, when the application was filed; a delay of one (1) year. The applicant does not at all explain the delay, save that he was pursuing an application before the High Court for revocation of the grant. The respondent has countered this, stating that the applicant filed several applications before the High Court on the same subject. The applicant has not denied.
18. The denial of leave by the High Court cannot be a basis for this application, in any event there is no proof of an attempt to obtain the same either in the High Court or this Court. Secondly, the fact that the applicant was pursuing an application or several applications is not an excuse either. It appears that, after failing in the various applications before the High Court, the applicant remembered one more card and pulled it out as a last resort; the appeal to this Court.
19. The respondent has stated that this litigation has been ongoing for over 20 years, and that since confirmation of the grant, parties have moved on and implemented the grant and are likely to be prejudiced.

20. As held by the Supreme Court in the **Salat** case (supra), an extension of time is not a right but an equitable remedy only available to a deserving party, who must lay a basis for the granting of the order, and further, the basis must be sufficiently explained. This Court has also stated several times that the sufficiency of the explanation is what paves the way for the consideration of other factors, such as length of delay, prejudice to be suffered by the opponent and possible success of the intended appeal.
21. In my view, the applicant has failed to sufficiently explain the delay in filing the appeal; secondly, he has not been candid before the court, yet he seeks an equitable remedy; and thirdly, the issue of leave has not been addressed, last this being an old matter the respondent is likely to be prejudiced though the applicant denies time factor is evidently a concern.
22. For the above reasons, the application is declined. Being a family matter, I do not make an order on costs.

**Dated and delivered at Nyeri this 23<sup>rd</sup> day of January, 2026.**

**ALI-ARONI**

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

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



*Signed*  
**DEPUTY REGISTRAR**