



REPUBLIC OF KENYA



KENYA LAW
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**County Government of Kiambu & another v Njenga (Civil Application
E333 of 2025) [2026] KECA 205 (KLR) (6 February 2026) (Ruling)**

Neutral citation: [2026] KECA 205 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPLICATION E333 OF 2025**

W KARANJA, JA

FEBRUARY 6, 2026

BETWEEN

COUNTY GOVERNMENT OF KIAMBU 1ST APPELLANT

COUNTY GOVERNMENT OF KIAMBU WATER AND SEWERAGE

COMPANY 2ND APPELLANT

AND

TERESIA NYAMBURA NJENGA RESPONDENT

(Being an application for extension of time to file and serve the Notice of Appeal, Memorandum of Appeal and the Record of Appeal out of time arising from the Judgment of the Environment and Land Court at Thika (L. Gacheru, J.) on the 17th day of May, 2019 in ELC Case No. 554 of 2017)

RULING

1. The notice of motion before me is dated 17th June 2025 and was filed under certificate of urgency. The applicants seek, in the main, that leave be granted for them to solve a notice of appeal and the record of appeal out of time against the decision of Lady Justice L. Gacheru delivered on 17th May 2019 in ELC Case number 554 of 2017.
2. The application has 10 grounds on its face. It is also supported by the affidavit sworn by Waithira Waiyaki, the applicant's chief legal officer, on 17th June 2025. According to Miss Waiyaki, the applicants were dissatisfied with the said judgment but apparently, they filed no appeal against it. They say that they were not informed by their Counsel of the decision. Counsel claimed that they were surprised to see a firm of auctioneers on 20th May 2005, six years after delivery of the said judgment, seeking to evict them from the suit property, which the applicants claim is public land held in trust by themselves for the community.



3. Instead of making an application for extension of time to file the appeal out of time, they moved back to Environment and Land Court and filed an application seeking to review the judgment, which application was not successful. They then filed the present application.
4. Before this Court, they say that the delay in pursuing the matter was on account of their counsel not informing them of the delivery of the said decision and that this mistake of counsel should not be visited on them. They urge the Court to allow them file their appeal out of time.
5. The application is opposed through the replying affidavit sworn by Sospeter Nyongesa, counsel on record for the respondents, sworn on 9th January 2026. Counsel deposes that the application in question is grounded on falsehoods and lies and the same ought to be dismissed. He reiterates that the judgment in question was delivered on 17th of May 2017 when the applicants were represented by their in-house counsel. They were ordered to comply with the judgment within 90 days from the date of delivery, but they did not do so. Counsel disclosed that on 19th March 2020 the applicants wrote to the respondent asking that they be allowed to settle the matter amicably, but that was not possible and so the respondents filed an application for eviction dated 28 July 2020. The court granted the order and authorized the court bailiff to evict the applicants.
6. Counsel maintains that the applicants are guilty of laches; the delay is inordinate; and that the same has not been explained to the Court. He deposes that the applicants had undertaken to compensate the respondent, who is an elderly lady in her 80s, but they kept going back on their word and hence this application. He urged the Court to dismiss the application with costs to the respondent.
7. Both parties filed submissions which I have considered along with the application, the rival affidavits and the applicable law.
8. Before I consider whether I have been given sufficient reasons to extend time to file the notice of appeal, I need to address an important issue, which is, whether having filed an application for review of the judgment, in exercise of the right under section 80 and Order 45 of the *Civil Procedure Act* and Rules, the applicants would now come to this Court by way of appeal. I do not think that having gone the review way, can come back to this Court and seek to appeal against the same judgment. I, nonetheless, note that the application and ruling on the review motion were not annexed to the replying affidavit. So, in case such proceedings were not there, I will still consider the application on merit.
9. On the merits of the application, the principles that guide the Court on whether to grant extension of time or not are well settled. The power to extend time under Rule 4 of this Court's Rules is an exercise of discretion and the factors to be considered were stated in *Fakir Mohammed -vs- Joseph Mugambi & 2 others* [2005] eKLR (Civil Application No. Nai. 332 of 2004) where the Court held that;

“The exercise of this Court’s discretion under Rule 4 has followed a well-beaten path since the stricture of “sufficient reason” was removed by amendment in 1985. As it is unfettered, there is no limit to the number of factors the court would consider so long as they are relevant. The period of delay, the reason for the delay, (possible) the chances of the appeal succeeding if the application is granted, the degree of prejudice to the respondent if the application is granted, the effect of delay on public administration, the importance of compliance with time limits, the resources of the parties, whether the matter raises issues of public importance-are all relevant but not exhaustive factor.”

See also *Mwangi -vs- Kenya Airways Ltd* (2003) KRL 486.



10. The impugned judgment was delivered on 17th May 2019 and this application was filed on 17th of June 2025 which is 6 years after the said judgment. There is evidence from the material placed before me that within that time the applicants were trying to negotiate with the respondent but they kept retracting on their promises and the negotiations turned a cropper. An application for review of the judgment is said to have been dismissed; an application to evict the applicants was filed and orders of eviction granted and it was thereafter that they decided to try their luck by way of appeal, hence the application before me which was six years late. In my view the delay of six years is inordinate by any standards.
11. Has this delay been explained? Not in my view. The explanation given is that mistake of counsel should not be visited on a party but clearly there was no mistake of counsel in this matter and counsel must have been acting on instructions of the applicants when pursuing negotiations and when filing an application for review. The applicants were aware of what was happening all this time. Having failed to explain the inordinate delay, I need not go into the other requirements as to whether they have a prima facie case with chances of success, but I can say that the intention to file an appeal six years after judgment will definitely be prejudicial to the respondent, who is said to be over 80 years old.
12. It is my considered view that the applicants are not deserving of the exercise of the favourable discretion of this Court. The application does not meet muster and I dismiss it with costs to the respondent.

DATED AND DELIVERED AT NAIROBI THIS 6TH DAY OF FEBRUARY 2026.

W. KARANJA

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

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

Signed

DEPUTY REGISTRAR.

