



**Njoroge v Odhiambo & 3 others (Civil Application E399 of 2025)  
[2026] KECA 211 (KLR) (6 February 2026) (Ruling)**

Neutral citation: [2026] KECA 211 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAIROBI  
CIVIL APPLICATION E399 OF 2025  
LA ACHODE, JA  
FEBRUARY 6, 2026**

**BETWEEN**

**EVERLYN WAIRIMU NJOROGE ..... APPLICANT**

**AND**

**PATRICIA NJERI ODHIAMBO ..... 1<sup>ST</sup> RESPONDENT**

**JANE WAIRIMU MIGUE ..... 2<sup>ND</sup> RESPONDENT**

**SPERANZA WANGARI MIGUE ..... 3<sup>RD</sup> RESPONDENT**

**YVONNE WANJA DUSABE ..... 4<sup>TH</sup> RESPONDENT**

*(Being an application for extension of time to lodge a Notice of Appeal and Intended record of appeal against the judgment and orders of the Family Court at Nairobi (A. Odero J) delivered on 14th August, 2024 in Nairobi Succession Cause No. 218 of 2010)*

**RULING**

1. By a Notice of Motion dated 30<sup>th</sup> June, 2025 stated to be brought under rules 4, 41, 42 of the Court of Appeal Rules 2022, Section 3A and 3B of the [Appellate Jurisdiction Act](#), the applicant is seeking leave to file a Notice of Appeal out of time, against the judgment of the High Court (Odero J), dated 14<sup>th</sup> August, 2024 and that the Notice of Appeal on record be deemed to be dully filed.
2. The grounds of the application as stated on the face thereof and supported by the appellant’s affidavit sworn on 30<sup>th</sup> June, 2025, are: that the applicant was aggrieved by part of the judgment and intends to file an appeal in this Court. That she was taken ill and has been in and out of hospital for over 9 months and only became aware of the fact of the judgment in June, 2025, when she recovered and by then the timeframe for lodging an appeal had lapsed. She took time to internalize the judgment and engage another firm of advocates namely, Makena and Company Advocates, to file the Notice of Appeal, albeit late.



3. The applicant avers that the delay was not deliberate or inordinate, and was caused by factors beyond her control. That the appeal is arguable and the applicant will be greatly prejudiced and suffer irreparable loss if she is not allowed to ventilate it. That the respondent is not likely to be prejudiced if the orders sought are granted and the intended appeal is allowed to proceed on merit.
4. Patricia Njeri Odhiambo the 1<sup>st</sup> respondent, swore a replying affidavit on 23<sup>rd</sup> January, 2026 on her own behalf and on behalf of the other respondents. She avers that the application is premature and a non-starter, as no leave has been obtained from the High court allowing the applicant to pursue the appeal as required by the law. That even so, despite having filed the Notice of Appeal way back in June 2025, and requested for typed proceedings, these have to date not been served on the respondent.
5. The respondent deposes that the applicant has not identified any exceptional or compelling circumstances to warrant the granting of the prayers for extension of time. That extension of time is not a right of a party. It is an equitable remedy, only available to a deserving party, at the discretion of the Court and this application militates against the cardinal rule that litigation must come to an end. That the application and supporting affidavit contains misrepresentations and half- truths, intended to mislead the Court.
6. The respondent deposes that no evidence has been produced to show that the applicant was admitted in any hospital for an extended time, or that she suffered from a life threatening condition, or that she had surgery and was so severely affected that she was unable to instruct her lawyers. That it is surprising that the applicant has been attended to in a clinic and not an actual hospital for the alleged 9 months and there is nothing in the consultation slip to show that she was under psychological distress, or mental illness that affected her ability to comprehend. The slip is just a hand written note that does not indicate the name of the attending doctor.
7. The respondent avers that the intended Memorandum of Appeal does not show any triable issues that would warrant the re-opening of the case. That the learned judge clearly articulated the arguments made by the parties and it is not true that she did not consider the applicant's protest. She avers that the applicant's claim that she is entitled to an equal share of the deceased's estate is misplaced. That the case before court was distribution of an estate based on the evidence in court and not distribution of matrimonial property, and in any case, she was not disinherited.
8. The respondent deposes that the applicant is clearly guilty of inordinate delay and the application is an afterthought, intended to delay the execution of the judgment. The respondent has already embarked on the replacement of titles, in the implementation of the grant, and the distribution of the estate is under way. That granting the orders sought will set the estate back in a matter where they are finally getting closure. She prayed that the application be dismissed with cost.
9. The applicant filed submissions dated 13<sup>th</sup> January 2026, through the firm of Makena & Company Advocates and restated the parameters to be considered in an application under rule 4 as set out by the Supreme Court Nicholas Kiptoo Arap Korir Salat vs IEBC & 7 others, Supreme Court of Kenya Application No. 16 of 2014. She identified 4 issues for determination.
10. The first issue is whether the delay was excusable. She cites the case of Andrew Kiplagat Chemaringo vs Paul Kipkorir Kibet [2018] eKLR, to urge that courts must avoid undue technicality at the expense of substantive justice and Vishva Supplies Company limited vs RSR Stone Limited [2020] eKLR, to adjure that genuine errors can occur and courts ought to look at the entire conduct of the applicant to determine whether justice would be better served by granting extension of time or refusing it.
11. The applicant submits on the second issue that the application was brought expeditiously in June 2025 when she recovered and was able to comprehend issues. That on the third issue, the respondent has



not established any prejudice to be suffered, which cannot be compensated by award of costs in the event that the application is allowed. To buttress this argument she cites the case of James Akhatioli Ambundo vs Lion of Kenya Insurance Company Ltd [2017] KEHC, 1553 (KLR).

12. Lastly, the applicant submits that the intended appeal is arguable as it challenges among others, the findings on the mode of distribution of the deceased's estate and the failure of the superior court to recognize the applicant as the legal wife, therefore entitled to a fair share of the deceased's estate. That these are not idle issues and deserve appellate consideration.
13. The firm of Judy Thongori and Company Advocates filed the respondent's submissions dated 26<sup>th</sup> January, 2026 and restated the averments in the affidavit. Counsel contends that the application is prematurely before this court if considered against the holding of this Court in Mungania & another vs Gitonga (Civil Appeal (Application) E109 of 2025)), and Mughal and Rashid (suing as the legal representatives of the estate of the late Rashid Mughal and another vs Bhola (Civil Appeal No. 41 of 2018)).
14. The respondent places reliance on the guiding principles applicable in determining a matter on extension of time in Odongo and another vs Investments and 3 others, (Civil Application E083 of 2023 [2024] KECA 375 (KLR)).
15. Regarding the applicant's illness, the respondent refers to the case of Papa vs Nyabola and another (Civil Application No. E127 of 2023), [2024] eKLR and Munikah (appealing as one of the personal representatives and Executor/ Administrator of the Will of the Estate of Alfred Josse Nakaya vs Wangai and another (Civil Application No. E472 of 2022) [2023] to urge that mere allegations of sickness are not sufficient to warrant the grant of an extension of time
16. As to whether the respondents will suffer prejudice, the Court is asked to note that the dispute was in court for a considerably long time and following the judgment, the respondents are finally getting closure. They have undertaken the process of replacement of titles and are in possession of properties granted to them. The applicant was not left out of the distribution, she only seeks to gain where she does not deserve and reopening the case will amount to undoing several milestones already achieved and money spent, that will not be refunded.
17. She asserts that the application has not met the threshold to warrant the orders sought being granted, and should be dismissed with costs for want of merit.
18. I have considered the grounds of the application, the averments in the affidavits and the rival submissions. The unfettered discretion of this Court to extend time for the filing of appeal donated by rule 4 of the Court of Appeal Rules, 2022, provides as follows:

“The Court may, on such terms as it thinks just, by order extend the time limited by these Rules, or by any decision of the Court or 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.”

19. The exercise of the discretion of this Court under rule 4 is unfettered indeed, but it must be exercised judiciously. There is no limit to the number of factors the Court may consider so long as they are relevant. These are such as the period and reason for the delay, the possible 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. These are all relevant



but not exhaustive factors. (See - the Court of Appeal case of Fakir Mohamed vs. Joseph Mugambi & 2 others [2005] eKLR).

20. The chronology of events in this case indicates a delay of almost 10 months from 14<sup>th</sup> August, 2024 when the impugned judgment was rendered to the date of this motion on 30<sup>th</sup> June, 2025. The delay has been attributed to sickness on the part of the applicant. She however, does not explain how the illness prevented her from filing an appeal since, according to her averment, she was not bed bound in hospital in all that period. She claims that she was “... in and out of hospital.” As stated in *Papa vs Nyabola* (supra)

“..... sickness of a party without more, does not entitle a party to extension of time, absent, a showing that the sickness prevented the party from perfecting his right of appeal.”

21. As to whether the respondents will suffer prejudice if the application is allowed, the Court notes that the dispute was in court for more than a decade before the High court pronounced itself. The respondents have already undertaken the process of replacement of titles and are in possession of properties granted to them and are in the process of distributing the estate. It is therefore, evident that to grant the orders sought by a party who took more than ten months to move the Court on appeal would be prejudicial to the respondents. Equity aids the vigilant and not the indolent.

22. The more important question however, is whether this Court is clothed with the jurisdiction to grant the orders sought. This appeal arises from a succession cause. There is therefore, no automatic right of appeal and it is not disputed that the applicant did not seek leave in the High court to appeal to this Court. In *Mungania*, (supra) the court stated that:

“To be entitled to orders for extension of time, to file a notice of appeal, the appellants must have a right of appeal to this court, and as the applicants had recognized when they first sought leave from the High Court, there is no automatic right of appeal from decision of the High Court to this court in succession matters”

23. In the case of *Mughal and Rashid* (supra) the Court stressed that:

“The right to appeal to this court is neither automatic nor absolute. This is because an appeal must lie to this Court under any law and where leave is a prerequisite, it must be sought and obtained.”

24. In the premise, I find that not only is the delay herein inordinate and inexcusable, there is no competent intended appeal for which leave might be granted. Reasons wherefore, the application dated 30<sup>th</sup> June, 2025 is found to lack merit and is hereby dismissed with costs to the respondent.

It is so ordered.

**DATED AND DELIVERED AT NAIROBI THIS 6<sup>TH</sup> DAY OF FEBRUARY, 2025**

**L. ACHODE**

.....

**JUDGE OF APPEAL**

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

Signed

**DEPUTY REGISTRAR.**

