IN THE COURT OF APPEAL AT NYERI

(CORAM: ALI-ARONI, J.A. (IN CHAMBERS) CIVIL APPLICATION NO. E128 OF 2025 BETWEEN

PAULINE MPAKA (Suing as the Legal Representative of the Estate of Gilbert Karagania Miringo).....APPLICANT

AND

NATHANIEL KITHINJI IKIUGU.....RESPONDENT

(An application for extension of time to file the record of appeal out of time against the ruling of the Environment and Land Court at Meru (Nzili, J.) dated 11th December 2024

in

ELCA No. E042 of 2024)

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RULING

1. Before me is an omnibus application erroneously brought under ***Order 42, Rule 6 of the Civil Procedure Rules***, and a host of other sections of the law not relevant for purposes of the application before this Court. It also references ***rule 5(2)(b)*** of the Court of Appeal Rules (Court's Rules). The application is seeking an extension of time to file a record of appeal out of time and for the memorandum of appeal on record be deemed as duly filed; an order of inhibition on property **L.R. No. Ntima/Ntakira/3348** pending hearing and determination of

the appeal; an order of injunction against interference with the

suit property pending the hearing and determination of the appeal; an order of stay of the judgment and further proceedings in the suit being appealed from.

2. The application is supported by the grounds on the face of the application and the supporting affidavit of the applicant **Pauline Mpaka,** dated 30th June 2025, wherein she deposes that she is aggrieved by the judgement and decree dated 11th December 2024; a notice of appeal was lodged on 17th of December 2025; and on the same day a letter bespeaking certified copies of the proceedings and judgement was filed and copied to the respondent; the same were made available on or around 24th July 2020; the delay was due to the late receipt of the proceedings; family members reside on the suit property; the respondent are moving to subdivide the land; and that the applicant has undertaken development on the suit property.

3. The respondent, **Nathaniel Kithinji Ikiugu,** opposes the application through a replying affidavit. He deposes that the appellant's affidavit is replete with lies; the applicant does not reside on the suit property; and the suit property is a subdivision. The respondent then proceeds to give a history of the matter culminating in the appeal and states that the appeal will not be rendered nugatory. There are no averments directly in relation to the application before the Court

4. Both parties have filed submissions in support of their

respective positions. The application came to me sitting as a single Judge. The submissions have touched on the myriad

prayers sought in the application, and, for reasons to be given shortly, I will summarise what is relevant to the extension of time.

5. For purposes of the application, before me, learned counsel for the applicant, in his submissions, reiterates the averments of the applicant; urges that the applicant was not indolent; the delay was not of her making and that the explanation why the proceedings were received late is plausible.

6. On the part of the respondent, they did not address the issue of extension of time at all.

7. This Court has, in several of its rulings, complained against the practice of seeking several prayers together where the mandate of the Court is variously donated. For instance, this application seeks orders that can be issued by a single judge, as well as others that require a full bench. Meaning that if the matter is placed before a single judge, the only issues that can be addressed are the ones which lie squarely with such a judge's mandate, and the rest are left unattended to, unless forwarded to a full bench after piecemeal hearing. It is inelegant to deal with an application piecemeal. In ***Associated Construction Company (K) Ltd vs. Kyamu Construction & Engineering Ltd (Civil Application E047 of 2022) [2022] KECA 872 (KLR),*** this Court stated:

"This is yet another of those untenable

omnibus applications where the applicant, Associated Construction Co (K) Ltd, seeks, in the same application, an order for extension of time to file

an appeal out of time and an order for stay of execution. <u>This Court has decried this practice,</u> <u>which is taking root among some practitioners</u> <u>at an alarming rate. Recently in</u> <u>*Abdulrazak Rageh Haji v. Mahadho Abdulrazak Adichare, CA No. E030 of 2020*</u> ***I stated as follows regarding this practice:***

> *"Before me is one of those omnibus applications that this Court has decried time and again. (See, for example, Riccardo Fannelli & 2 Others v. Frigrieri Graziano, Civil Application No. 51 of 2015 and Christopher Iddi Moto & 15 Others v. Chiriba Nyambu Barua, Civil Application No 43 of 2014). The applicant seeks extension of time to file a notice of appeal and in the same application, an order for stay of execution of the judgment and decree that he intends to appeal. It is not rocket science to appreciate that under the Court of Appeal Rules an application for extension of time is the remit of a single judge whilst an application for stay of execution is the business of the full court. How exactly the same application can be heard in instalments, first by a single judge, and subsequently by the full Court, is not clear to me. Plus, a party cannot obtain stay of execution of a decree or judgment of the High Court without first filing a notice of appeal!*
>
> *<u>This practice has to stop forthwith. For purposes</u> <u>of this application, and in deference to Article</u> <u>159 (2) (d) of the Constitution, I shall treat the</u> <u>application before me as one solely concerned</u> <u>with extension of time. After all, that is the only</u> <u>issue that I can legitimately deal with as a single Judge."</u>* (Emphasis Added)

8. I totally agree with the sentiment of the Court above. It

appears that counsel either do not read precedents of this Court or do

not bother. In the same breath, I must also decry references to the Civil Procedure Code and Rules, which clearly provide that they govern proceedings in the High Court. This Court has its own Rules that govern proceedings before it, but counsel again appear ignorant of the fact. Rules of procedure, as has been said repeatedly, are handmaidens of justice. They facilitate a fair, orderly, and efficient administration of justice and, therefore, need to be understood and applied accordingly.

9. I have said enough on the process. The application has several issues; in the interest of justice, however, I will deal with the same only to the extent of the matter falling within the jurisdiction of a single judge, namely, the extension of time. Should the applicant succeed, she may move the Court afresh for a stay or any other orders as desired.

10. The application ought to have been made under ***rule 4*** of the Court's rules that give unfettered discretion to the Court to allow extension of time for doing any act prescribed by the rules or ordered by the Court.

Rule 4 provides as follows:

> ***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.***

11. In fortifying the provision of ***rule 4,*** this Court in ***Ruriga vs. Njuki (Civil Application 100 of 2020) [2023] KECA 3 (KLR),*** the Court stated:

> ***"…the factors I am supposed to take into consideration in the determination of an application of this nature are first, the length of the delay, secondly, reason(s) of the delay. Thirdly, possible arguability of the intended appeal and fourthly, any prejudice to be suffered by the opposite party should the relief sought by the applicant be granted. Fourthly (sic), any public interest that may be involved in the matter."***

12. The applicant herein filed a notice of appeal and served the same within time. She applied for certified copies of proceedings and judgment on time and copied the letter bespeaking proceedings to counsel for the respondent. The proceedings were received outside the 60 days within which to file an appeal from the date of lodging the notice of appeal as prescribed by ***rule 84.*** There is a stamp depicting that the proceedings were certified on 25th July 2025, although the application was filed on 30th June 2025. I assume this is an error.

13. It is not clear why counsel did not obtain the certificate of delay in line with the proviso to ***rule 84*** of the Court's rules, as this application would have been unnecessary. ***Rule 84*** provides that:

> ***(1) Subject to rule 118, an appeal shall be instituted by lodging in the appropriate***

registry, within sixty days after the date when the notice of appeal was lodged—

(a) a memorandum of appeal, in four copies;

(b) the record of appeal, in four copies;
(c) the prescribed fee; and

(d) security for the costs of the appeal:

Provided that, where an application for a copy of the proceedings in the superior court has been made in accordance with sub-rule (2) within thirty days after the date of the decision against which it is desired to appeal, there shall, in computing the time within which the appeal is to be instituted, be excluded such time as may be certified by the registrar of the superior court as having been required for the preparation and delivery to the appellant of such copy.

(2) An appellant shall not be entitled to rely on the proviso to sub-rule (1) unless the appellant's application for such copy was in writing and a copy of the application was served upon the respondent.

14. From the chronology of events, the delay in receiving the certified copies of the proceedings and judgment was not of the applicant's making. Where she had a role to play, she moved with speed, including filing this application, which is unopposed, in the sense that the respondent did not comment on the prayer for extension of time. Nor was there a demonstration of any prejudice likely to be suffered by

the
respondent either.

15. The application is therefore allowed. The record of appeal be filed and served within the next 30 days of today's date.

16. Costs will abide by the outcome of the appeal.

Dated and Delivered at Nyeri this 17th day of February, 2026.

ALI-ARONI

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JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR