

**IN THE COURT OF
APPEAL AT
NAIROBI**

**CORAM: JAMILA MOHAMMED, J.A. (IN
CHAMBERS)) CIVIL APPLICATION NO. E363 OF
2025**

BETWEEN

NAIROBI CITY COUNTY.....APPLICANT

AND

KARIOBANGI SEWERAGE FARMERS

**SELF-HELP GROUP.....1ST
RESPONDENT**

MERAB ANYANGO POCHE.....2ND

**RESPONDENT WILLIAM KINYUA GATHARA & RASHID KEBERE
(AS CHAIRMAN AND SECRETARY FOR AND ON BEHALF OF
KARIOBANGI NORTH LIGHT INDUSTRIES**

**JUA KALI ASSOCIATION).....3RD
RESPONDENT**

(Being an application seeking leave to file a notice of appeal and a record of appeal out of time against the whole judgment of the Environment and Land Court at Nairobi (L. Komingoi, J.) dated 20th June 2024

in

ELC NO. 1680 of 1999 (O.S))

****** RULING**

Background

1) The application dated 13th March 2025, brought pursuant to **Rule 4** of

the Court of Appeal Rules, 2022, seeks extension of time within which to file and serve the notice of appeal and the record of appeal against the

judgment of the Environment and Land Court (ELC) (**L. Komingoi, J.**) delivered on 20th June 2024. The application is supported by the affidavit sworn on the same date by **W.S. Ogola**, the County Solicitor of **Nairobi City County** (the applicant).

Kariobangi Sewerage Farmers Self-Help Group, Merab Anyango Poche, William Kinyua Gathara & Rashid Kebere (As Chairman and Secretary for and on Behalf of Kariobangi North Light Industries Jua kali Association) are the 1st to 3rd respondents respectively.

- 2) The background to the application is straightforward. Judgment in the ELC was delivered on 20th June 2024. The applicant states that it only became aware of that judgment approximately two months later, upon making inquiries with its then advocates on record.
- 3) Being dissatisfied with the outcome of the judgment, the applicant instructed new counsel, **Messrs. A.A. Khalif Advocates LLP**, to take over conduct of the matter with a view to lodging an appeal. According to the applicant, there was delay in retrieving the file from the former advocates on record, with the result that the applicant was only able to assess the matter and take the necessary procedural steps in December 2024.
- 4) The applicant maintains that the intended appeal raises arguable issues and has high prospects of success.

5) The application is uncontested. The respondents have neither filed a replying affidavit nor submissions.

Determination

6) The question falling for determination is whether the applicant has satisfied the threshold for the exercise of this Court's discretion under Rule 4 of the Court of Appeal Rules, 2022.

7) Rule 4 vests in this Court wide and unfettered discretion to extend time limited by the Rules or by any decision of the Court. However, that discretion, though unfettered, must be exercised judicially and on well-established principles.

8) The locus classicus on the exercise of that discretion remains L **Leo Sila**

Mutiso v Hellen Wangari Mwangi [1999] 2 EA 231, where the Court

stated that the factors to be considered include:

- the length of the delay;
- the reason for the delay;
- the chances of the intended appeal succeeding; and
- the degree of prejudice to the respondent.

9) Those principles have been consistently reiterated by this Court. In **Fakir**

Mohamed v Joseph Mugambi & 2 Others, the Court emphasized that

although the discretion under Rule 4 is unfettered, an applicant must nonetheless place before the Court sufficient material upon which the

Court can properly exercise that discretion.

10) The Supreme Court also articulated the guiding principles governing extension of time in **Nicholas Kiptoo Arap Korir Salat v**

Independent

Electoral and Boundaries Commission & 7 Others, emphasizing that

extension of time is not a right but an equitable remedy available only to a deserving party who has laid a satisfactory basis for the exercise of the Court's discretion.

11) More recently, the Court of Appeal has reaffirmed these principles. In

Imbisi v Kakamega & 2 Others [2024] KECA, the Court reiterated that

Rule 4 empowers the Court to extend time "*on such terms as it thinks just,*" provided that the applicant demonstrates a satisfactory explanation for the delay.

12) Similarly, in **Murimi v Kabiru & 2 Others [2025] KECA**, the Court emphasized that an applicant seeking extension of time must place before the Court a plausible and satisfactory explanation for the delay, without which the Court cannot properly exercise its discretion.

13) Regarding the explanation for the delay, the applicant explains that the delay arose from the fact that it was not informed by its former advocates of the delivery of judgment and only became aware of the same two months later upon making inquiries.

14) The applicant further states that upon becoming aware of the judgment it instructed new counsel to take over conduct of the matter. However,

there was delay in retrieving the file from the former advocates, which hindered the new advocates from taking the necessary steps immediately.

15) The Court has long recognized that in appropriate circumstances a litigant ought not to be unduly penalized for the mistakes of counsel.

In **Belinda Murai & 9 Others v Amos Wainaina**, the Court observed that

“a mistake is a mistake... the door of justice is not closed because a mistake has been made by a lawyer.” Likewise, in **Philip Chemwolo**

&

Another v Augustine Kubende, the Court emphasized that blunders will

occur from time to time and it does not follow that because a mistake has been made a party should be shut out from having his case determined on the merits.

16) On the question whether the delay is inordinate, under Rule 77(2) of the Court of Appeal Rules, 2022, a notice of appeal must be lodged within fourteen (14) days of the decision intended to be appealed against.

17) In the instant case, judgment was delivered on 20th June 2024, while the present application was filed on 13th March 2025, representing a delay of approximately nine months. Whether delay is inordinate

depends on the circumstances of each case. In **Mukabi v Mukabi**

[2004] KECA

100 (KLR), the Court accepted that explanations grounded in practical

realities may justify delay. Likewise, in **Anastasius H. Kamau v Karen**

Insurance Brokers Limited, the Court held that a delay of three months

was not necessarily inordinate where a satisfactory explanation had been offered.

18) In the circumstances of this case, and bearing in mind the explanation offered by the applicant regarding the delay in learning of the judgment and retrieving the file from former counsel, I am not persuaded that the delay of about nine months can properly be described as inordinate.

19) On the prospects of the intended appeal, the applicant has also asserted that the intended appeal has high prospects of success. However, it is well settled that a single judge exercising jurisdiction under Rule 4 does not determine the merits of the intended appeal. As this Court stated in **Athuman Nusura Juma v Afwa Mohamed Ramadhan [2016] eKLR:**

“...this Court has to be careful to ensure that whether the intended appeal has merit or not is not an issue to be determined with finality by a single Judge.”

20) Suffice it to say that at this stage nothing definitive can be said regarding the merits of the intended appeal.

21) Considering the length of the delay, the explanation offered, and the fact that the application is unopposed, I am satisfied that the applicant has laid a proper basis upon which this Court may exercise its discretion under Rule 4 of the Court of Appeal Rules, 2022.

22) Accordingly, the application dated 13th March 2025 is allowed.

23) The applicant shall file and serve the appeal within fourteen (14) days from the date of this ruling.

24) The costs of the motion shall be in the intended appeal.

Dated and delivered at Nairobi this 6th day of March, 2026.

JAMILA MOHAMMED

.....
JUDGE OF APPEAL

I certify that this is a true
copy of the original

Signed

DEPUTY REGISTRAR

