



REPUBLIC OF KENYA



KENYA LAW
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**Chege v Adams (Civil Application E620 of 2025)
[2026] KECA 462 (KLR) (6 March 2026) (Ruling)**

Neutral citation: [2026] KECA 462 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPLICATION E620 OF 2025
BM KAIRARIA, JA
MARCH 6, 2026**

BETWEEN

FLORENCE WAMAITHA CHEGE APPLICANT

AND

JANE MUCHUNU ADAMS RESPONDENT

(An application to seek leave to file Notice of Appeal and Appeal out of time against the Judgment of the Environment and Land Court of Kenya at Thika (B.M. Eboso, J.) delivered on 28th March 2022 in) in ELC Case No. 682 of 2017)

RULING

1. By a Notice of motion application dated 27th October 2025 Florence Wamaitha Chege [the applicant] seeks leave to file notice of appeal and appeal out of time against the whole judgment of (B.M. Eboso, J.) dated 28th March, 2022 in the Environment and Land Court at Thika [ELC CASE NO. 682 OF 2017] in which the learned judge allowed the respondent's claim for an order compelling the Land Registrar to restrictions /cautions registered against title number Kiambaa/Kihara/1023 and dismissed the applicant's counterclaim for adverse possession.
2. The applicant was dissatisfied with the judgment of the court and desired to appeal against the decision to this Court but did not lodge the notice of appeal within the 14 days after the date of the decision as required by rule 77[2] of the Court of Appeal Rules 2022.
3. Considering that the decision intended to be appealed was delivered on 28th March, 2022 any party desirous of appealing ought to have signalled the intention to do so by lodging a notice of appeal by 11th April, 2022. The applicant did not do so.
4. The applicant first signalled her desire to appeal in November, 2022 when she and Joyce Ruguru Chege [now deceased] filed before this court an omnibus application dated 16th November, 2022 in which



they sought leave to appeal out of time, leave to file notice of appeal and record of appeal and an order for stay of execution of the judgement pending the hearing and determination of the intended appeal. This was over 6 months from the date when the Notice of appeal ought to have been lodged; a delay of 219 days.

5. That application [Civil Application No. Nai E427 OF 2022] came up for hearing on 7th July 2023 before (Okwengu, J.A.) [as she then was] who declined to hear it and remitted it back to the Registry for listing before an appropriate bench in view of the prayer for stay of execution which a single judge has no jurisdiction to hear by dint of Rule 55[2] b of the Rules of the Court.
6. According to the applicant Civil Appl. No. E427/2022 has not been listed for hearing before an appropriate bench and has been apparently abandoned without being formally withdrawn in favour of institution of the instant application on the advice of her current counsel who rightly reckons that the correct rules of procedure [Court of Appeal Rules] had not been invoked. The former application had been expressed to be brought pursuant to the provisions of the Civil Procedure Rules.
7. Whereas the instant application has correctly invoked Rule 4 which grants this Court unfettered discretion to extend time for doing any act authorized or required by the rules on such terms as may be just, the citing of rule 5[2] in an application for extension of time as has been done in the current application is inappropriate as the latter rule is not concerned with extension of time at all.
8. The two principal prayers in the instant application are not framed as seeking extension of time but rather inelegantly for the Court to be pleased to; a] grant leave to the applicant to appeal the whole of the judgment in ELC Case No. 682 of 2017: Jane Muchunu Adams V Joyce Ruguru Chege & 4 others out of time and b] grant the applicant leave and deem that the applicant's notice of appeal dated 14th October 2025 as properly filed upon payment of the requisite fees.
9. The principles upon which the Court exercises its jurisdiction to extend time under rule 4 are well settled. They are succinctly enunciated in *Leo Sila Mutiso v Hellen Wangari Mwangi* [1999] 2 EA 231, where the Court stated:

“It is now well settled that the decision whether or not to extend time for appealing is essentially discretionary. It is also well settled that in general the matters which this court takes into account in deciding to grant an extension of time are: first the length of the delay, secondly the reason for delay, thirdly possibly the chances of the appeal has of succeeding and fourth the degree of prejudice to the Respondent if the application is granted.”
10. I have considered the application and weighed the reasons proffered by the applicant as set out at ground 9 in the Notice of motion application as well as paragraph 24 in the affidavit [dated 27th October, 2025] in support of her application for extension of time to file the appeal outside the time frame prescribed by the rules.
11. I note that the single reason given for the delay is that statutory period for lodging of an appeal lapsed as the applicant sought to change advocates following the delivery of the judgment and by the time she appointed a new advocate in November, 2022. No satisfactory explanation has been given why it took the applicant over six months to instruct new an advocate.
12. I find the delay of over six months in appointing a new advocate is not only inordinate but also has not been sufficiently explained to warrant the exercise of discretion in the applicant's favour.
13. Furthermore, a grant of extension of time would be prejudicial to the respondent considering that the primary suit was filed in the year 2017, judgment was delivered on 28th March, 2022 and before that



the respondent's predecessor in title had litigated with the applicant's predecessor in title over the same property in High Court Civil Case No. 1654 of 1994 as noted at paragraph 8 in the judgment intended to be appealed.

14. In the upshot, I find and hold that the application dated 27th October, 2025 lacks merit and is hereby dismissed with no orders as to costs.

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

MURUNGI B. KAIRARIA

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JUDGE OF APPEAL

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

Signed.

DEPUTY REGISTRAR

