

**IN THE COURT OF
APPEAL AT NAIROBI**

(CORAM: MURUNGI B. KAIRARIA, J.A. (IN CHAMBERS))

CIVIL APPLICATION NO. E606 OF 2025

BETWEEN

LOICE SELENKIA.....APPLICANT

AND

GRACE NANEU ANDREW.....RESPONDENT

(Being an application for the extension and enlargement of the time within which to file record of appeal against the judgment and decree of the High Court of Kenya at Milimani (M. W. Muigai, J.) dated 27th February, 2017

in:

***Milimani Succession Cause No. 231 of
2007)***

RULING

1. **Loise Selenkia** the applicant in the Notice of motion application for extension of time to file a record of appeal from the judgment of the High Court in Milimani Succession Cause No. 231 of 2007 - In the matter of the Estate of the Late Selenkia Ole Mpapi filed objection to making of grant to the respondents **Grace Naneu Andrew** and **Emmanuel Memusi** on grounds that the two;
 - a) were not wife/widow and brother of the deceased:
 - b) have no grant of representation, are not beneficiaries of the estate of the deceased: and
 - c) made false statements and concealed material facts.

2. In a judgement dated 27th February, 2017 [M. W. Muigai, J.] upheld the objection to the extent that the Objector (1st Wife/Widow) had been left out as a Co-administrator of the deceased's estate ,directed that she be included as a co-administrator and ordered that a grant shall be issued in the names of the two widows of the deceased (Loise Selenkia and Grace Naneu Andrew) and the deceased's only asset LR Loitoktok /Rombo/A86 be distributed in the ratio of 2/3 [estimated at 20 acres) and 1/3 [estimated at 10 acres] to the 1st Family [Objector/applicant] and 2nd family (1st Petitioner/Respondent] respectively.
3. Additionally, the judge directed the Administrators to file summons for confirmation of grant with liberty to any party aggrieved by the decision to either apply to the court or exercise the right of appeal.
4. The administrators did not apply for confirmation of the court and none of the parties signalled any displeasure with the judgment by way of an application to the court for review or exercised the right of appeal.
5. Instead, after a lull of about five [5] years, the applicant moved the High Court for leave to file an appeal to this Court out of time by an application dated 17th June, 2022. That application was heard and allowed by (S. N. Riechi, J.) in a ruling delivered on 31st July,2024. The learned judge granted the applicant leave to file appeal out of time and further directed the applicant to file the appeal within 30 days.

6. The applicant did not file the appeal within 30 days from 31st July 2024 hence the instant application to this Court for enlargement of time to file appeal against judgment dated 27th February, 2017.
7. The application is supported by the two affidavits sworn on 19th October, 2025 and 6th February, 2026 by the applicant's advocate(Karanu Waweru) and seeks two principal prayers namely that the court be pleased to:
 - a) enlarge and extend time for the applicant to file a record of appeal against the judgment of the High Court [MUIGAI J] dated 27th February, 2017 in Succession Cause No. 231 of 2007; and
 - b) allow the Notice of appeal dated 27th August, 2024 and filed in the Superior Court on even date to be deemed to be properly filed and served on the respondents.
8. The applicant also relies on the written submissions dated 6th February 2026 in urging the court to exercise its discretion to extend time to enable her appeal the decision of the High Court dated 27th February, 2017 contending that she was not to blame for the delay in filing the appeal. She blames the delay partly on her former advocate whom she accuses of failing to inform her of the delivery of the judgment timeously and partly on the trial court which delivered both the judgment (27th February, 2017) and the ruling granting 30 days extension of time to appeal out of time on 31st July, 2024 without notice.

9. The applicant further blames the court for taking two years to deliver the ruling on the application for leave to appeal out of time, delaying supplying the applicant with certified proceedings and certificate of delay.
10. Ultimately the applicant submits that she has an arguable appeal on the question whether the essential ingredients of the existence of a Masai Customary law marriage between the 1st respondent and the deceased on the basis of which the High Court determined that the 1st respondent was the deceased's second wife thus entitled to a share of the deceased's estate.
11. The applicant adds that the delay in filing the appeal has been satisfactorily explained in the supporting affidavits and the Respondent has not explained what she was doing towards the confirmation of the grant in the superior court between 2017 and 2022. She urges the Court to invoke its wide and unfettered discretion under rule 4 of the Rules and extend time for the appellant to lodge the record of appeal.
12. I have not seen the replying affidavit sworn on 4th January, 2026 by the 1st respondent (Grace Naneu) in opposition to the application (a reference to which is made in the applicant's supplementary affidavit at paragraph 2) in which she is accused of trying to paint the applicant "as indolent while maintaining a studious silence on why she did not take steps to apply for confirmation of the grant following the 2017 judgment". I have also not seen any submissions filed by

the respondents.

13. Having considered the application, the affidavits and submissions in support thereof; the question that falls for determination is whether the applicant should be granted more time to appeal against the decision of the High Court delivered on 27th February, 2017 following her failure to file the appeal within 30 days window afforded by Riechi, J. on 31st July, 2024.
14. The applicant has invoked the unfettered jurisdiction conferred by Rule 4 of the Court of Appeal rules to extend time to do anything that is authorized or required by the rules on such terms as it thinks just and it was incumbent upon her to demonstrate that she is deserving of the Court's exercise of the discretion in her favour.
- 15.** The principles that govern this court when exercising its mandate under Rule 4 of the Rules are well settled. They are as set out in the decision of the Court in **Leo Sila Mutiso vs Hellen Wangari Mwangi [1999] 2 EA 231**. The Court has a wide discretion which is to be exercised judiciously taking into account, the reason for the delay, the duration of the delay, the likely prejudice to the Respondent and possibly the chances of appeal.
16. Considering that the decision sought to be appealed was rendered on 27th February 2017 considerable time -a period of over 8 years had passed by the time the applicant made her application for extension of time before this court on 17th October, 2025. No notice of appeal was filed and served within 14 days of the decision and no

appeal was filed

at all hence the instant application. A period of over 8 years is on the face of it rather inordinate considering the strict timelines set by the rules and it was therefore incumbent upon the Applicant to offer plausible reasons to benefit from the exercise of the court's discretion to extend time under Rule 4.

17. Regarding the reason for the delay between 27th February, 2017 and 17th June, 2022 when she applied for leave to appeal out of time at the High Court the applicant stated that she first became aware of the judgment four years after delivery in particular on 8th August 2021 when her son brought a letter dated 4th March, 2021 from her former advocates forwarding a copy of the judgment. The import of the judgment was only explained to her in the month of November, 2021 following which she terminated the services of her former advocates [Solonka & Company Advocates on 21st December, 2021.
18. She appointed her current advocates on 26th January, 2022 who did not file an application for leave to appeal immediately because he needed to peruse the court file which did not happen until end of March 2022 when it was traced.
19. The applicant then gave instructions to apply for leave to file the appeal out of time and stay of execution at the Superior Court on 17th June, 2022.

20. There was already a delay of over five years in bringing the first application for leave to appeal out of time which in my assessment was inordinate. This delay has not been satisfactorily explained.

21. For though judgment was delivered in the absence of the parties on 27th February, 2017 and the applicant does not indicate how and when her former advocates first became aware of the judgment, there is evidence that the said advocate was aware of the judgement by 30th September, 2020 when they requested for a copy of the judgment (see exhibit LS3 in the applicant's affidavit sworn on 17th June, 2022).

22. That it took close to one year from 20th September, 2020 for the applicant to become aware of the judgement coupled with the fact that the applicant was last in court on 23rd February , 2009 and her former advocates office is in November, 2021 demonstrates that the applicant was not proactive in following up her objection case. In those circumstances it is not enough to blame the former advocate for the delay in communicating the delivery of judgment. As the Court stated in **Rajesh Rughani vs. Fifty Investments Ltd & Another [2016**

eKLR], parties to a litigation have a responsibility to not only show interest but also follow up on their cases even where they are represented by an advocate.

23. The delay in filing the application in this Court has also not been satisfactorily explained. If it is true that the applicant's current

advocate became aware of the ruling granting a 30 days window to file the appeal

on Friday 20th August, 2024 they must have noticed that the applicant had about 10 days left to file the appeal within the extended period granted by the High Court in their absence on 31st July, 2024 and immediately applied for extension of time.

24. The applicant should not have waited for certificate of delay to be issued over one year after the extended period lapsed to make the instant application.

25. In the upshot, I find and hold that the application for extension of time dated 19th October, 2025 lacks merit for lack of satisfactory explanation for the inordinate delay and is hereby dismissed with no orders as to costs.

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

MURUNGI B. KAIRARIA

.....
JUDGE OF APPEAL

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

Signed.

DEPUTY REGISTRAR