



Morjaria v Ringview Apartments Ltd & 6 others (Civil Application E517 of 2025) [2026] KECA 386 (KLR) (27 February 2026) (Ruling)

Neutral citation: [2026] KECA 386 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPLICATION E517 OF 2025
K M'INOTI, JA
FEBRUARY 27, 2026**

BETWEEN

VIJAY MORJARIA APPLICANT

AND

RINGVIEW APARTMENTS LTD 1ST RESPONDENT

REGISTRAR OF TITLES 2ND RESPONDENT

ATTORNEY GENERAL 3RD RESPONDENT

DR MBIRA GIKONYO 4TH RESPONDENT

LUCY WANJIKU MAINA 5TH RESPONDENT

WANGETHI MWANGI 6TH RESPONDENT

LIZZIE WANGUI WANGETHI 7TH RESPONDENT

(Application for extension of time to appeal from the ruling and order of the Environment and Land Court at Nairobi (Mbugua, J.) dated 30th October 2024 in ELCC No. E025 of 2024)

RULING

1. Before me is the applicant's (Vijay Morjaria's) notice of motion dated 25th July 2025 in which he seeks an order for extension of time to appeal from the ruling and order of the Environment and Land Court (ELC) at Nairobi (Mbugua, J.) dated 30th October 2024. The brief background to the application is as follows.
2. On 25th January 2024, the applicant filed a suit against the respondents and pleaded that the 1st respondent, Ringview Apartments Ltd., sold to him Apartment Nos. A4 and C1 (the suit properties) erected and being on LR No. 4858/11. He further pleaded that on 9th February 2023 the ELC issued



- a decree in ELCC NO. 782 of 2014 and ordered the 1st respondent to transfer the said apartments to him upon payment of Kshs. 2,500,000.00. However, unlawfully and in violation of the court order, the 1st respondent transferred the Apartments to a Mr. Joram Mwaura Kiuna (Mr. Kiuna).
3. Simultaneously with the suit, the applicant filed an application for injunction to stop the 1st respondent and Mr. Kiuna from transferring or dealing with the suit properties together with some other 16 apartments on LR No. 4858/11, pending the hearing and determination of the suit. The respondents opposed the application, on among other grounds, that it was res judicata and that the applicant had not satisfied the conditions set out in the decree in ELCC No. 782 of 2014.
 4. By a ruling dated 30th October 2024, the ELC dismissed the application and struck out the suit with costs, after finding that it was an abuse of the process of the court. The applicant was aggrieved and on 5th November 2024, well within the time prescribed by rule 77(2) of the Court of Appeal Rules, lodged a notice of appeal. The applicant also applied, within the time prescribed by rule 84 of the Court of Appeal Rules, for certified copies of the judgment and proceedings.
 5. From the Certificate of Delay on record, the applicant's advocates were notified that the proceedings were ready for collection on 23rd January 2025 and the proceedings were collected on 24th January 2025. By dint of the proviso to rule 84, the applicant was obliged to file the appeal within sixty (60) days from 23rd January 2025 to around 23rd March 2025. No appeal was filed within that period.
 6. On 25th July 2025 the applicant filed the current application for extension of time to file the appeal. The crisp explanation for the delay in filing the appeal is that the applicant's counsel, the late Dr. Wilfred Mutubwa, passed away suddenly on 26th November 2024. His practice was a sole proprietorship, and it was not until 28th February 2025 that another advocate, Anami Joy Claudia, obtained, pursuant to regulation 14 of the Law Society of Kenya (General Regulations) 2020, a limited grant of letters of administration ad colligenda bona to manage, handle and deal with pending legal suits and briefs in the firm of the late advocate.
 7. The applicant adds that in the circumstances, the application has been made as soon as possible and that the intended appeal is not frivolous. It is contended that the intended appeal is arguable because the ELC erred by conflating two distinct suits; by holding that the matter was res judicata without appreciating that the applicant was challenging the fraudulent transfer of the suit properties; by striking out the suit without hearing the applicant on merit; by violating the applicant's right to fair hearing under Article 50 of *the Constitution*; and by occasioning him serious miscarriage of justice.
 8. In his written submissions dated 21st January 2026, the applicant cited the decision of the Supreme Court in Nicholas Kiptoo arap Korir Salat v. IEBC & 7 Others [2014] eKLR on the factors to be taken into account in an application for extension of time. It was contended that the sudden death of the applicant's advocate seriously disrupted the normal operations of the law firm, leading to the failure to file the appeal within the prescribed time. Further, that upon the death of the advocate, there was no one with immediate authority to access, act and issue instructions on the files of the deceased. It is also the applicant's contention that the respondent's do not stand to suffer any prejudice if the application is allowed.
 9. The 1st, 4th, 5th, 6th and 7th respondents opposed the application vide a replying affidavit sworn by the 4th respondent, Dr. Mbira Gikonyo, on 22nd September 2025. They averred that the nomination of Ms. Anami as administrator of Dr. Mutubwa's law firm under the Law Society of Kenya (General Regulations) 2020 was by operation of the law and did not require a limited grant under the *Law of Succession Act*. In their view, she assumed her obligations immediately upon the death of Dr. Mutubwa, Advocate.



10. It was further contended that the delay from the date when the applicant was advised that the certified copies of the proceedings were ready for collection and the filing of the present application for extension of time is totally unexplained and that a delay of six months was inordinate and unjustified.
11. It was also contended that the applicant's intended appeal is frivolous and raises no arguable issues because the ELC properly found that the issues raised in the applicant's suit were fully and finally determined in the earlier suit. For the above reasons the said respondents urged the Court to dismiss the application with costs.
12. The other respondents, namely the Registrar of Titles and the Attorney General did not respond to the application.
13. I have carefully considered this application. It is firmly settled that subject to being exercised judiciously, the discretion of the Court to extend time under rule 4 of the Court of Appeal Rules is otherwise wide and unfettered. Some of the considerations that guide the Court in determining whether or not to exercise the discretion include the period of delay, the reason for the delay, the degree that the respondent stands to suffer in the event that the application is granted, whether the matter raises issues of public importance and (possibly) the chances of success of the intended appeal. (See *Leo Sila Mutiso v. Rose Hellen Wangari Mwangi* [1999] 2 EA 231 and *Fakir Mohamed v. Joseph Mugambi & 2 Others* [2005] KECA 340 (KLR)).
14. In *Muchugi Kiragu v. James Muchugi Kiragu & Another* [1998] KECA 81 (KLR) the Court's approach under rule 4 was stated as follows:

“Lastly, we would like to observe that the discretion granted under Rule 4 of the Rules of this Court to extend the time for lodging an appeal, is, as is well known, unfettered and is only subject to it being granted on terms as the Court may think just. Within this context, this Court has on several occasions, granted extension of time, on the basis that an intended appeal is an arguable one and that it would therefore, be wrong to shut an applicant out of Court and deny him the right of appeal unless it can fairly be said that his action was in the circumstances, inexcusable and that his opponent was prejudiced by it.”

15. The judgment that the appellant wishes to appeal was rendered on 30th October 2024. The applicant's counsel duly lodged a notice of appeal and a letter bespeaking proceedings within the prescribed time. Unfortunately, less than a month from the date of the judgment, counsel, who was a sole practitioner passed on. Those facts are not in dispute. The applicant argues that the death of counsel threw his firm into disarray and that he had to wait for appointment of another counsel, Ms Anami, to run the affairs of the firm, which only happened on 28th February 2025. The respondents, however, contend that by dint of the Law Society of Kenya (General Regulations) 2020, Ms. Anami was supposed to assume her responsibilities over the firm of Dr. Mutubwa immediately upon his death.
16. Regulation 14, headed “Firm Administrator” reads as follows:

“ 14

- (1) A sole practitioner shall, within 60 days of establishing a law firm, nominate a member or members in Form LSK-06 in the First Schedule to be administrator of the member's legal practice in the event that that sole practitioner—
 - a. dies;



- b. is suspended from practising under the *Advocates Act*;
 - c. is struck off the Roll of Advocates;
 - d. is adjudged bankrupt by a court of competent jurisdiction; or
 - e. otherwise becomes legally incapacitated.
2. Nomination under this regulation shall be made once but a member so nominating shall notify the secretary on any change in the name or particulars of the nominee.
 3. The secretary shall not accept nomination unless the nominee has consented to act as administrator, in Form LSK-07 in the First Schedule.
 4. This regulation does not override the right of a member to appoint by Will a qualified executor to act as administrator of the law firm or practice in any of the circumstances contemplated under sub- regulation (1).
 5. For the purposes of sub-regulation (4), “qualified” means qualified to practise under the *Advocates Act*.
17. I am not persuaded by the respondents’ argument that a nomination under regulation 14 automatically entitles the nominee, immediately upon demise of an advocate, to step into the shoes of the deceased advocate and run the affairs of the law firm. Access to the bank accounts of the firm, for example, would require more than nomination under the regulation. Be that as it may, Ms. Anami appears to have believed, reasonably in my view, that she had to obtain a limited grant to enable her fully take up and discharge her obligations as the nominee of the late Dr. Mutubwa.
18. After obtaining the limited grant, there was a delay of about four months before this application was made for extension of time. I must, however, take into account the fact that the applicant’s appeal was not the only matter being handled by the late Dr. Mutubwa. It stands to reason that the death of a sole partitioner creates immediate and compelling challenges in the firm which make it impossible for pending litigation to proceed as smoothly as it would be expected if the advocate was alive. While collecting the certified proceedings from the court is the easier part, drafting the memorandum of appeal and preparing the record of appeal, amid attendance to other cases, requires more focus and time. I find that in the circumstances of this application, although a delay of four months would ordinarily be inordinate, the delay has been candidly, honestly and convincingly explained.
19. As regards whether the applicant’s intended appeal is frivolous or arguable, I have looked at the draft memorandum of appeal and all I can say is that I do not think it is frivolous. At this stage, as a single judge, I cannot make definite findings about the merits of the appeal and I can only consider the issue on a prima facie basis. In *Athuman Nusura Juma v. Afwa Mohamed Ramadhan*, CA No 227 of 2015, it was held as follows:

“This Court has been careful to ensure that whether the intended appeal has merits or not is not an issue determined with finality by a single judge. That is why in virtually all its decisions on the considerations upon which discretion to extend time is exercised, the Court



has prefixed the consideration whether the intended appeal has chances of success with the word “possibly”.

20. Turning to the prejudice that each party is likely to suffer, the respondents have a ruling in their favour, the fruits of which they are entitled to enjoy. On the other, the applicant has a constitutionally underpinned right of appeal to this Court, which has not been timeously pursued due to the unfortunate circumstance that befell his counsel. While the 1st respondent prejudice is a delay in enjoyment of the fruits the decision in their favour, that of the applicant’s prejudice entails total shut out from the Court. There is nothing on record to suggest that the applicant is trying to still a match on the respondents, or has otherwise engaged in conduct that this Court would frown upon. In the circumstances, I am persuaded that it is the applicant that stands to suffer the greater prejudice, should I not grant this application.
21. Taking all the foregoing factors into account, I find that the applicant’s application dated 25th July 2025 is merited and I accordingly, allow the same. The applicant shall file and serve the record of appeal within twenty one (21) days from the date of this ruling. Costs of this application shall abide the outcome of the appeal. It is so ordered.

DATED AND DELIVERED AT NAIROBI THIS 27TH DAY OF FEBRUARY 2026.

K. M’INOTI

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JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR.

