



Maleli & another (Suing as the Administrators of the Estate of John Mutisya Mumo - Deceased) v Kang'ethe (Civil Application E563 of 2025) [2026] KECA 400 (KLR) (27 February 2026) (Ruling)

Neutral citation: [2026] KECA 400 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPLICATION E563 OF 2025
RB NGETICH, JA
FEBRUARY 27, 2026**

BETWEEN

**EUNICE KAMENE MALELI 1ST APPLICANT
ESTHER LOKO MUTISYA 2ND APPLICANT
SUING AS THE ADMINISTRATORS OF THE ESTATE OF JOHN MUTISYA
MUMO - DECEASED**

AND

HUMPHREY IHUGO KANG'ETHE RESPONDENT

(Being an Application for enlargement of time to file a Notice of Appeal against the whole Ruling and order of the Environment and Land Court at Milimani Nairobi (Judy Omenge, J) delivered on 20th November, 2025 in ELC Petition No. 22 of 2024)

RULING

1. Before me is a Notice of Motion dated 24th September 2025 brought under Rule 4 of the Court of Appeal Rules seeking extension of time to lodge and serve a Notice of Appeal against the judgment delivered on 14th August 2017 in Nairobi ELC No. 967 of 2014 by Hon. K. Bor.
2. The impugned judgment ordered, inter alia, that House No. C.14, Kimathi Estate, L.R. No. 209/7383 be transferred to the respondent.
3. The application is supported by an affidavit sworn by counsel for the applicants. The respondent opposes the application through a replying affidavit sworn on his own behalf.



Applicants' Case

The applicants contend that they only became aware of the existence of the judgment in 2025 upon being served with eviction orders issued in Milimani CM ELC No. E210 of 2022.

4. They aver that the judgment was procured through misrepresentation, including alleged false testimony by persons who purported to be sons of the deceased. They further assert that:
 - a. The deceased never validly sold the suit property to the respondent.
 - b. The deceased was mentally incapacitated during the proceedings and no guardian ad litem was appointed.
 - c. The deceased passed away before delivery of judgment and was not substituted.
 - d. The estate was therefore denied a fair hearing.
5. The applicants submit that the delay, though lengthy, is explained by lack of knowledge of the judgment and by what they term deliberate concealment by the respondent. They argue that the intended appeal is arguable and that unless time is extended, they will suffer irreparable prejudice through eviction and loss of inheritance.
6. They rely on the principles set out by the Supreme Court in *Nicholas Kiptoo Arap Korir Salat v IEBC & 7 Others* regarding extension of time.

Respondent's Case

7. The respondent deposes that judgment was delivered in 2017 eight years prior to the filing of this application and was duly executed. He states the following:
 - a. He complied with all conditions in the decree.
 - b. A transfer was executed pursuant to the judgment and registered.
 - c. He has since taken possession, renovated, and rented out the property.
 - d. The deceased was represented by counsel during trial.
 - e. The applicants previously filed applications in the ELC seeking to set aside the judgment, one of which was dismissed and another withdrawn.
8. He contends that the applicants were aware of the proceedings and that the present application is an abuse of process intended to re-open concluded litigation. Analysis
9. The principles guiding the exercise of discretion in an application for extension of time are settled. The Court considers, among other factors, the length of the delay, the reason for the delay, the arguability of the intended appeal, and the degree of prejudice to the respondent. These factors are not exhaustive, nor are they to be applied mechanically; the overarching consideration remains the interests of justice.
10. In the present case, the delay in lodging the intended appeal is undeniably inordinate, and the explanation offered by the applicant does not fully account for the entire period of delay. Ordinarily, such delay would weigh heavily against the grant of the Court's discretion.
11. However, this is not an ordinary case. The intended appeal raises serious and weighty questions of law, including whether the suit proceeded to judgment after the death of a party without substitution, and whether the right to a fair hearing was compromised by alleged mental incapacity in the absence of a



guardian ad litem. These are not peripheral or technical complaints. They go to the jurisdiction of the court and the legality of the proceedings themselves. If established, they would potentially render the impugned judgment a nullity.

12. At this stage, the Court is not concerned with the ultimate success of the appeal. It suffices that the grounds disclosed are arguable and deserving of consideration by the appellate court. To decline extension solely on account of delay would have the effect of permanently shutting out appellate interrogation of issues that strike at the root of the proceedings and implicate constitutional guarantees of fair hearing.
13. While the respondent has urged the importance of finality in litigation, any prejudice occasioned by the grant of extension can be adequately compensated by an award of costs. On the other hand, refusal of the application would irreversibly extinguish the applicant's right of appeal and foreclose examination of serious jurisdictional and constitutional questions.
14. In the exceptional circumstances of this case, and bearing in mind that discretion under Rule 4 is unfettered and must be exercised to advance substantive justice, I am persuaded that the arguability and gravity of the intended appeal outweigh the unsatisfactory explanation for delay.
15. From the foregoing, I am inclined to grant the applicant leave to file appeal out of time.

Order accordingly.

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

R. NGETICH

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JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR.

