



REPUBLIC OF KENYA



KENYA LAW
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Matheka v Mulei (Suing on Behalf of the Estate of the Late Daniel Kiio Mbali (Deceased)) (Civil Appeal (Application) E434 of 2025) [2026] KECA 417 (KLR) (27 February 2026) (Ruling)

Neutral citation: [2026] KECA 417 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPEAL (APPLICATION) E434 OF 2025**

**J MOHAMMED, JA
FEBRUARY 27, 2026**

BETWEEN

COSMAS MBALI MATHEKA APPLICANT

AND

**MARTHA MWENDE MULEI (SUING ON BEHALF OF THE ESTATE OF THE
LATE DANIEL KIIO MBALI (DECEASED)) RESPONDENT**

(Being an application for extension of time to file and serve the record of appeal out of time against the judgment and decree of the Environment and Land Court at Makueni (J.T. Murigi, J.) delivered on 22nd January 2025 in ELC Case No. 4 of 2019 (O.S.))

RULING

Background

1. The applicant, Cosmas Mbali Matheka, has moved this Court by way of a Notice of Motion dated 13th June 2025 expressed to be brought under Sections 3A and 3B of the *Appellate Jurisdiction Act*, Cap 9 and Rule 4 of the Court of Appeal Rules (this Court's Rules) seeking principally:
 - a. An order extending time to file and serve the record of appeal out of time against the entire judgment and decree of the Environment and Land Court delivered on 22nd January 2025;
 - b. An order deeming the record of appeal already filed as duly filed and served; and
 - c. That costs of the application be in the cause.
2. The application is supported by the affidavit of Mr. Titus Koceyo, learned counsel for the applicant. It is deponed that a Notice of Appeal was lodged on 4th February 2025; that the record of appeal could not be filed within sixty days owing to delay in preparation of certified typed proceedings; that a letter bespeaking proceedings is on record dated 1st April 2025; that a certificate of delay was issued on 30th



May 2025 certifying that proceedings were prepared between 4th February 2025 and 29th May 2025; and that the record of appeal was thereafter filed on 9th June 2025.

3. The respondent has not filed any replying affidavit or submissions in opposition to the application.

Determination

4. This application invokes Rule 4 of this Court's Rules, which vests in this Court wide and unfettered discretion to extend time. That discretion, though broad, must be exercised judiciously and on sound legal principles.
5. The governing parameters were settled in *Leo Sila Mutiso v Hellen Wangari Mwangi* [1999] 2 EA 231, reaffirmed in *Fakir Mohamed v Joseph Mugambi & 2 Others* [2005] eKLR, and endorsed by the Supreme Court in *Nicholas Kiptoo Arap Korir Salat v IEBC & 7 Others* [2014] eKLR. The Supreme Court emphasized that extension of time is not a right but an equitable remedy available upon satisfactory explanation.
6. Further guidance was provided in *County Executive of Kisumu v County Government of Kisumu & 8 Others* [2017] eKLR and *Muringa Company Ltd v Archdiocese of Nairobi Registered Trustees* [2020] eKLR, affirming that discretion must advance substantive justice.
7. The applicable considerations include:
 - a. The length of the delay;
 - b. The reason for the delay;
 - c. The arguability of the intended appeal; and
 - d. The degree of prejudice likely to be suffered by the respondent.
8. On the length of delay, the impugned judgment was delivered on 22nd January 2025. The Notice of Appeal was lodged on 4th February 2025 within the prescribed time. The certificate of delay indicates that proceedings were prepared between 4th February 2025 and 29th May 2025. The record of appeal was filed on 9th June 2025. The delay, if any, is minimal and not inordinate.
9. On the reason for delay, the certificate certifies the time required for preparation of proceedings. The delay is attributable to preparation of proceedings and compilation of the record. It is notable that while the Certificate of Delay was issued on 30th May 2025, the record of appeal was filed on 9th June 2025. The explanation has not been controverted.
10. On arguability, at this stage, the Court does not determine the merits of the appeal. It suffices that the appeal is not frivolous. As stated in *Stanley Kang'ethe Kinyanjui v Tony Ketter & 5 Others* [2013] eKLR, an arguable appeal is one that raises at least one bona fide issue deserving consideration. The intended appeal challenges the entire judgment and is not shown to be frivolous.
11. On prejudice, the respondent has not opposed the application nor demonstrated any prejudice. Denying extension would shut out the applicant from the appellate process, contrary to the principles of substantive justice under Article 159(2)(d) of *the Constitution*.
12. In the circumstances, I am satisfied that the applicant has provided a reasonable explanation for the delay; that the delay is neither inordinate nor inexcusable; and that no prejudice will be suffered by the respondent.
13. Accordingly, I direct as follows:



- a. The Notice of Motion dated 13th June 2025 is hereby allowed.
- b. The record of appeal filed on 9th June 2025 is deemed as duly filed and served.
- c. Costs of the application shall abide the outcome of the appeal.

14. Orders accordingly.

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

JAMILA MOHAMMED

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JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

