



**Ngugi v Gachiri & another (Civil Application 458 of 2021)
[2026] KECA 391 (KLR) (27 February 2026) (Ruling)**

Neutral citation: [2026] KECA 391 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPLICATION 458 OF 2021
RB NGETICH, JA
FEBRUARY 27, 2026**

BETWEEN

PAULINA WANJIRU NGUGI APPLICANT

AND

PETER MBIYU GACHIRI 1ST RESPONDENT

CITY COUNCIL OF NAIROBI 2ND RESPONDENT

(Being an application for extension of time to file a Notice of Appeal from the judgment of the Environment and Land Court at Nairobi (Okongo, J) delivered on 4th February 2021 in Nairobi ELC Case No. 494 of 2012)

RULING

1. Before me is an application dated 17th December 2021 brought under Rule 4 of the Court of Appeal Rules seeking extension of time to file and serve a Notice of Appeal against the judgment of the Environment and Land Court delivered on 4th February 2021 in Nairobi ELC Case No. 494 of 2012.
2. The application is supported by an affidavit sworn by learned counsel for the applicant, Mr. George Ndemo Sagini. The applicant's case is that the judgment was delivered in the absence of her former advocates and that she was informed of the outcome after the time for lodging a Notice of Appeal had lapsed. Upon learning of the judgment, counsel applied for typed proceedings on 5th March 2021.
3. It is further deponed that the applicant has been unwell and suffers from diabetes and arthritis, which limited her physical ability and delayed her instructions and facilitation of the appeal process. Counsel states that although the steps towards appeal were taken belatedly, a draft memorandum and notice of appeal have since been prepared and served, and the applicant is ready to proceed should leave be granted.



4. The applicant contends that unless time is extended, she will be shut out from the appellate process, yet the intended appeal raises arguable issues of law relating to the legality of the transfer and allocation of the suit property, as well as the trial court's treatment of evidence concerning occupation and identification of the disputed plot.
5. The application was served and written submissions were filed. There is no replying affidavit on record challenging the factual explanation for delay Analysis
6. The principles governing applications for extension of time under Rule 4 are now well settled. The discretion of the Court is unfettered and must be exercised judiciously, taking into account all relevant circumstances of the case.
7. In *Fakir Mohammed v Joseph Mugambi & 2 others* [2005] KECA 340 (KLR), this Court outlined the non-exhaustive factors to be considered, including the length of delay, the reason for the delay, the arguability of the intended appeal, the degree of prejudice to the respondent, and the importance of compliance with timelines.
8. The judgment sought to be appealed from was delivered on 4th February 2021, while the present application was filed on 17th December 2021 a period of about 10 month. The delay is therefore considerable and calls for a plausible explanation.
9. The explanation offered is that the applicant was not promptly informed of the delivery of judgment by her former advocates and only learnt of it after the time for lodging a Notice of Appeal had expired. Upon becoming aware of the judgment, counsel applied for proceedings. In addition, the applicant's ill health is cited as a factor that impeded timely facilitation of the appeal process.
10. While delay attributable to counsel is not always excusable, the Court has consistently held that a litigant should not, in appropriate cases, be unduly punished for the inadvertence or omission of counsel, particularly where the explanation is not controverted and there is no suggestion of bad faith.
11. On arguability, the applicant has set out proposed grounds touching on the authority of public officers to re-allocate public land and the alleged misidentification of the suit property. Without delving into the merits, I am satisfied that the intended appeal is not frivolous and raises at least one bona fide issue deserving consideration by the Court.
12. As regards prejudice, no specific prejudice has been demonstrated by the respondents that cannot be compensated by costs. On the other hand, refusal of the application would permanently lock the applicant out of the appellate process.
13. Considering circumstances of this case, and guided by the overriding objective of facilitating the just determination of disputes, I am satisfied that the applicant has laid a sufficient basis for the exercise of this Court's discretion.
14. Final orders:
 - a. The application for extension of time is therefore allowed.
 - b. The applicant shall file and serve the Notice of Appeal within seven (14) days from the date hereof.
 - c. Costs of the application shall abide the outcome of the intended appeal. It is so ordered.

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.

