



**Argos Furnishers Ltd v Musila & 37 others (Civil Application
E644 of 2025) [2026] KECA 508 (KLR) (13 March 2026) (Ruling)**

Neutral citation: [2026] KECA 508 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPLICATION E644 OF 2025**

**M SILA, JA
MARCH 13, 2026**

BETWEEN

ARGOS FURNISHERS LTD APPLICANT

AND

SAMUEL MUSILA & 37 OTHERS RESPONDENT

*(An application to file and serve memorandum of appeal & record of appeal
outside time against the judgment and decree of the Environment and Land Court
at Nairobi (Angote, J.) dated 30th October 2020 in ELC Case No. 15 of 2003)*

RULING

1. The application before me is that dated 5 November 2025. It is essentially an application brought pursuant to Rule 4 of the Court of Appeal Rules, 2022. It seeks extension of time to file a Memorandum of Appeal and Record of Appeal out of time, against the decision of Angote J, delivered on 30 October 2020 in the Machakos ELC No. 15 of 2003.
2. The application is supported by the affidavit of Shusheel Shah, a director of the applicant company which is described as a family company. He deposes that after the judgment was delivered on 30 October 2020, the applicant instructed its then counsel on record, M/s Nduva Kitonga & Company Advocates to file an appeal, and a Notice of Appeal was duly filed on 5 November 2020. Counsel also sought to be supplied with certified copies of the proceedings and judgment, and these were duly supplied on 14 March 2022. Mr. Shusheel Shah deposes that at around this time, their matriarch, Indira Rajnikant Shah, who was also a director of the company, fell seriously ill, which led to her being hospitalized both locally and in India. Unfortunately, she eventually died. It is deposed that the illness of their mother also led to Mr. Shusheel Shah developing stress and health complications of his own. It is said that all this diverted their attention from the court case leading to a communication breakdown between the family and the law firm of M/s Nduva Kitonga & Company Advocates. As a result of this communication breakdown, the record of appeal was not filed in time. It is averred that the company



has now instructed new counsel, M/s KREW Advocates, with instructions to proceed with the appeal. To his affidavit, Mr. Shusheel Shah has annexed a bundle of treatment documents to demonstrate that his mother and himself were indeed ill as he has deposed.

3. The application is opposed by the replying affidavit of Litha Kalunde Muema, the 30th respondent, who has sworn the affidavit on her behalf and on behalf of the 2nd – 37th respondents. She is of the view that the application has been brought after extreme delay, pointing out that it is filed more than five years after the judgment. She has also pointed at the treatment notes attached and observed that some date back to 2017 when the case was still proceeding. She does not believe that the illness adequately addresses the delay. She has deposed that the applicant is a limited liability company with three directors and it has not been demonstrated that the other directors were unable to execute documents or instruct counsel to file the appeal. She is also of the belief that the applicant has not demonstrated an arguable appeal. She has averred that they are implementing the judgment and have registered themselves into a group with trustees and are in the process of registering the suit land into their names.
4. I have considered the foregoing alongside the submissions filed by counsel for the applicant and respondent.
5. This is an application for extension of time to file an appeal out of time and the principles are now well settled. Thus, in the case of *Fakir Mohamed v Joseph Mugambi & 2 others* [2005] KECA 340 (KLR), Waki J.A, commented as follows:

“The exercise of this Court’s discretion under Rule 4 has followed a well-beaten path since the stricture of “sufficient reason” was removed by amendment in 1985. As it is unfettered, there is no limit to the number of factors the court would consider so long as they are relevant. The period of delay, the reason for the delay, (possibly) the chances of the appeal succeeding if the application is granted, the degree of prejudice to the respondent if the application is granted, the effect of delay on public administration, the importance of compliance with time limits, the resources of the parties, whether the matter raises issues of public importance-are all relevant but not exhaustive factors: See *Mutiso vs Mwangi Civil Appl. NAI. 255 of 1997 (ur)*, *Mwangi vs Kenya Airways*

Ltd [2003] KLR 486, *Major Joseph Mwereri*

Igweta vs Murika M’Ethare & Attorney

General Civil Appl. NAI. 8/2000 (ur) and Murai

v Wainaina (No 4) [1982] KLR 38.”

6. I have the foregoing in mind as I determine this application.
7. I have seen that the suit sought to be appealed against was commenced by the applicant through a plaint filed in the High Court at Machakos sometime in the year 2003. The dispute was over the land parcel Machakos

Municipality/Block II/221. The applicant averred that through a sale agreement, entered into sometime in 1997, it purchased the suit land from the erstwhile registered proprietor, Sammy Musila Mukoma, the 1st respondent herein. I need to mention that the 1st respondent died before the case before the superior court was heard and determined.

He was never substituted and therefore the case against him abated. After buying the land from the 1st respondent, the applicant got registered as proprietor on 27 February 1997. When the applicant bought the land, the 2nd – 38 respondents had erected stalls on the land and were operating businesses



thereon. It is because of their presence on the land that the applicant filed suit for their eviction. The defence of the 2nd – 38th respondents was that they had been on the suit land from 1969; they raised the defence of adverse possession and counterclaimed to have title to the land. In his judgment, the trial judge upheld their defence and counterclaim, and dismissed the case of the applicant, vide the judgment delivered on 30 October 2020.

8. I have seen that the applicant did file a notice of appeal on 5 November 2020 which was within time. I have also seen that the applicant applied for proceedings which were received on 14 March 2022. The applicant thus had 60 days from the date of receipt of the proceedings to file an appeal as prescribed by Rule 82 of the Court of Appeal Rules, 2010, which were the rules in place at the time. No appeal was filed within this stipulated time. The explanation given is that Ms. Indira Rajnikant Shah fell seriously ill at around this time and attention was diverted towards her treatment both in Kenya and in India. Mr. Shusheel Shah also fell ill. Thus the core reason given is that the applicant was unable to proceed to file the appeal because of illness.
9. I have looked at the treatment documents attached. It would appear that indeed Ms. Indira Rajnikant Shah was very ill around this time. I can also see that Mr. Shusheel Shah was also being attended for treatment. I am not however persuaded that the illness of Ms. Shah and Mr. Shusheel Shah incapacitated the company to the extent that it was unable to provide instructions to counsel to file the appeal. I have looked at the particulars of shareholders and directors of the applicant and I see that the company has a third shareholder and director in name of Nishil Rajnikant Shah. I have also seen that it was indeed Mr. Nishil Rajnikant Shah who was the one attending to this suit. He is in fact one of the two persons who signed the sale agreement to purchase the disputed land and also the one who testified in the suit. No explanation has been given on the whereabouts of Nishil Rajnikant Shah. It has also not been contended that owing to the illness of Ms. Shah and Mr. Shusheel Shah, the company operations stalled completely. Now, if the company had capacity to run its daily operations, then it also had capacity to attend to its court matters. Much as I sympathise with what the family was going through, that is not sufficient to enable me exercise my discretion in favour of the applicant, as it has not been demonstrated that the company completely failed to operate because of the illness of Ms. Shah and Mr. Shusheel Shah.
10. Apart from the foregoing, we also need to be alive to the length of the delay. The judgment was delivered on 30 October 2020. The application herein is coming more than five years after the judgment, and more than three years after the proceedings were availed. That is a significant period of time and indeed it appears that owing to the failure of the applicant to file an appeal, the 2nd – 38th respondents have moved on with life, on the assumption that the applicant no longer has interest in pursuing the appeal. I think it would be grossly unfair and prejudicial to drag the 2nd – 38th respondents back to litigation after all this time and after they have done so much to give effect to the judgment. In the circumstances of this case, we need to call time to the litigation. Indeed, litigation at some point must come to an end, and I think we should call it a day given the lapse of time.
11. It is for the foregoing reasons that this court is not persuaded to exercise its discretion in favour of the applicant. Consequently, this application is dismissed with costs.

Orders accordingly.

DATED AND DELIVERED AT NAIROBI THIS 13TH DAY OF MARCH, 2026

MUNYAO SILA

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JUDGE OF APPEAL



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

Signed

DEPUTY REGISTRAR.

