



**Kimani v Swastic Holdings Limited (Civil Application
E648 of 2025) [2026] KECA 547 (KLR) (13 March 2026) (Ruling)**

Neutral citation: [2026] KECA 547 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPLICATION E648 OF 2025**

M SILA, JA

MARCH 13, 2026

BETWEEN

ANN NYAGUTHI KIMANI APPLICANT

AND

SWASTIC HOLDINGS LIMITED RESPONDENT

*(An application for leave to extend time to file the record of appeal out of time
from the ruling and order of the Environment and Land Court at Nairobi
(Mogeni, J.) dated 25th September 2021 in ELC Case No. E369 of 2021)*

RULING

1. The application before me is one dated 7 November 2025. It is brought pursuant to Rule 4 of the Court of Appeal Rules, 2022. The applicant is seeking the leave of this court to file her Memorandum and Record of Appeal out of time. Despite the respondent being served, nothing has been filed to oppose the motion.
2. From the supporting affidavit sworn by the applicant, I can see that the applicant intends to appeal against the ruling of the Environment and Land Court delivered on 25 September 2023.

The background to that ruling is that the respondent had sued the applicant before the superior court and the suit proceeded ex parte, culminating in a judgment in favour of the respondent delivered on 27 February 2023. The applicant filed a notice of appeal against that judgment and also filed an application before the Court of Appeal which was dismissed on 26 May 2023. She then opted to withdraw the appeal and went back to the Environment and Land Court with an application dated 9 June 2023 seeking to set aside the ex parte judgment. It is that application which was dismissed on 25 September 2023. Aggrieved, the applicant filed a notice of appeal on 3 October 2023, against that ruling, and applied for proceedings. The proceedings were made available on 27 October 2025, and on 6 November 2025 a Certificate of Delay was issued. This application was then filed the following day,



i.e 7 November 2025, and I as I earlier stated, it is an application to be allowed to file the Memorandum of Appeal and Record of Appeal out of time.

3. Rule 84 of the Court of Appeal Rules, 2022, prescribes the time within which to file the Memorandum and Record of Appeal. It provides as follows:

84. Institution of appeals

1. Subject to rule 118, an appeal shall be instituted by lodging in the appropriate registry, within sixty days after the date when the notice of appeal was lodged—
 - a. a memorandum of appeal, in four copies;



- b. the record of appeal, in four copies;
 - c. the prescribed fee; and
 - d. security for the costs of the appeal:

Provided that where an application for a copy of the proceedings in the superior court has been made in accordance with sub-rule (2) within thirty days after the date of the decision against which it is desired to appeal, there shall, in computing the time within which the appeal is to be instituted, be excluded such time as may be certified by the registrar of the superior court as having been required for the preparation and delivery to the appellant of such copy.

2. An appellant shall not be entitled to rely on the proviso to sub-rule (1) unless the appellant's application for such copy was in writing and a copy of the application was served upon the respondent.



3. The period specified in sub-rule (1) for the institution of appeals shall apply to appeals from superior courts in the exercise of their bankruptcy jurisdiction.”
4. From the above, it will be seen that one needs to file the Memorandum and Record of Appeal within 60 days of filing the notice of appeal. The time is however extended to cover the period taken for the preparation and supply of the proceedings, so that this time is excluded as noted in the proviso to Rule 84 (1), subject to the appellant having sought the proceedings in writing and copied that application to the respondent. In our case, I see that the applicant’s counsel applied for the proceedings through a letter dated 4 October 2023 which letter is copied to the respondent’s counsel. The proceedings were pronounced ready on 27 October 2025. There is a certificate of delay confirming that the proceedings were applied for on 4 October 2023 and supplied on 27 October 2025.
5. I am unable to fathom why the applicant came to court with this application as I would think that she automatically benefits from the proviso to Rule 84 (1). She had the certificate of delay and all she needed to do was to proceed and file the appeal. She did not need to file this application. In fact, the filing of this application and the time taken to dispose of it, has now made the applicant out of time, while all along she was within time.
6. I would take it that this is a mistake of counsel for it was the responsibility of counsel to advise the applicant that she was within time to file the appeal pursuant to the proviso to Rule 84 (1). It appears that he did not, and instead led the applicant to file a pretty unnecessary application. She is now out of time owing to that mistake of counsel when she was otherwise within time. I would not wish that she is shut out because of that mistake. Now that she is out of time, I will exercise my discretion and extend the time for her to file and serve the Memorandum and Record of Appeal. I will order that the same be filed and served within the next 14 days. If this is not done then the extension granted herein shall lapse.
7. I make no order as to 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.

