



**Mutisya v Mutisya & 2 others (Civil Application E715 of 2025)  
[2026] KECA 510 (KLR) (13 March 2026) (Ruling)**

Neutral citation: [2026] KECA 510 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAIROBI  
CIVIL APPLICATION E715 OF 2025  
AI HASSAN, JA  
MARCH 13, 2026**

**BETWEEN**

**MANTHI MUTISYA ..... APPLICANT**

**AND**

**IKANZA MUTISYA ..... 1<sup>ST</sup> RESPONDENT**

**NDUKU MUSILA ..... 2<sup>ND</sup> RESPONDENT**

**MBEKE IKOLONZO ..... 3<sup>RD</sup> RESPONDENT**

*(An application seeking extension of time to file an appeal out of time from the ruling of the High Court of Kenya at Machakos (M.W Muigai, J.) dated 28th November, 2024 in Succession Cause No. 778 of 2010)*

**RULING**

1. Before me is a Notice of Motion dated 27<sup>th</sup> November, 2025 brought under Articles 48, 50(1),159 (2) (b) & (d) and 259 (1) of *the Constitution* of Kenya, Sections 3A and 3B of the *Appellate Jurisdiction Act*, Cap 9 Laws of Kenya, Rules 4,53 and 59(2) of the Court of Appeal Rules and all other enabling provisions of the law substantively seeking an order granting leave to the applicant to file the appeal out of time in an intended appeal against the ruling of the High Court at Machakos (M.W. Muigai, J.) dated 28<sup>th</sup> November, 2024 in Succession Cause No. 778 of 2010.
2. The application is supported by the grounds set out on its body and a supporting affidavit sworn by the applicant on 27th November, 2025. The respondents, though duly served, did not file anything to oppose the application. The applicant canvassed his application by way of written submissions. The applicant's submissions are dated 10th January, 2026.
3. The applicant's averments and submissions are that the High Court at Machakos delivered a ruling on 28<sup>th</sup> November, 2024. Being aggrieved by the ruling, the applicant proceeded to lodge a Notice of



Appeal dated 10<sup>th</sup> December, 2024. His advocates thereafter applied for certified typed proceedings, ruling and order to enable preparation of the record of appeal. He contends that there was considerable delay in availing the typed proceedings by the Machakos High Court registry.

4. The applicant contends that the delay in filing the instant application is therefore excusable having been occasioned by extraneous and administrative circumstances beyond the applicant's control.
5. It is further contended that the intended appeal raises weighty, arguable issues of law and fact. The applicant has however not annexed a draft memorandum of appeal to the affidavit in support of the application.
6. In his submissions, the applicant avers that no prejudice will befall the respondent if the application is allowed.
7. I have carefully considered the application, grounds in support thereof, the submissions filed by the applicant as well as the law. The principles upon which this Court exercises its discretion pursuant to Rule 4 to extend time or not, have now taken a well beaten path. The Court has wide and unfettered discretion in deciding whether to extend time or not. However, in exercising its discretion the Court should do so judiciously. See *Mwangi v Kenya Airways Limited* (2003) KLR 486 where this Court stated thus:

“Over the years, the Court has set out guidelines on what a single Judge should consider when dealing with an application for extension of time under Rule 4 of the Rules. For instance, in the case of *Leo Sila Mutiso v Rose Hellen Wangari Mwangi* [1999] which is the locus classicus, laid down the parameters as follows:

“It is now well settled that the decision whether or not to extend the time for appealing is essentially discretionary. It is also well settled that in general the matters which this Court takes into account in deciding whether to grant an extension of time are: first the length of the delay, secondly, the reason for the delay; thirdly (possibly) the chances of the appeal succeeding if the application is granted; and, fourthly, the degree of prejudice to the respondent if the application is granted.”[Emphasis supplied.]

8. As regards the length of delay, in *Andrew Kiplagat Chemaringo v Paul Kipkorir Kibet* [2018] eKLR this Court stated that there is no maximum or minimum period of delay set out under the law. However, the reason or reasons for the delay must be reasonable and plausible:

“The law does not set out any minimum or maximum period of delay. All it states is that any delay should be satisfactorily explained. A plausible and satisfactory explanation for delay is the key that unlocks the court's flow of discretionary favour. There has to be valid and clear reasons, upon which discretion can be favorably exercisable.”

9. In the instant case and as regards the length of the delay, the impugned ruling was delivered on 28th November, 2024, whereas the instant motion is dated 27th November, 2025. There has therefore been a delay of approximately 1 year.



10. As to whether the delay was satisfactorily explained, the applicant cited the delay in obtaining typed proceedings and ruling as the reason for delay in filing the appeal. Under Rule 82, of this Court's Rules, the institution of appeals is provided for on terms inter alia that: -

- “(1) Subject to rule 115, an appeal shall be instituted by lodging in the appropriate registry, within sixty days of the date when the notice of appeal was lodged
- a. a memorandum of appeal, in quadruplicate;
  - b. the record of appeal, in quadruplicate;
  - 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 of 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.”

11. The applicant has blamed the High court registry for the delay in lodging the record of appeal. However, this argument that the registry was to blame cannot hold because, under the proviso to Rule 82 (1) aforesaid, an applicant is afforded some reprieve in so far as computation of time is concerned, if there was delay in preparation of the proceedings upon making a written request for the proceedings. This is to say that, the computation of the 60 day window within which an appellant should lodge the record of appeal is suspended during the typing of proceedings provided the applicant serves the letter bespeaking proceedings upon the court and the respondent. A certificate of delay is usually issued in such cases, specifying the time taken for the proceedings to be typed, for purposes of exclusion of the same during computation. Without the certificate of delay from the registry then the delay has not been satisfactorily explained. In *Hamendra Mansukhalal Shah v Alnoor Kara & Another* [2000] eKLR this Court stated as follows:

“I am inclined to agree with Mr. Mwangi that the explanation given for the 47 days delay has not been sufficiently explained to me. If indeed as claimed by the applicant the fault laid with the registry of the superior court there was nothing to stop the applicant from obtaining even a mere letter from the registry to the effect that the file was missing during the said period and therefore the notice could not be lodged.”

12. For these reasons, I find that the delay in filing the record of appeal has not been sufficiently explained by the applicant. The applicant failed to act diligently in pursuing his right to appeal.
13. On the aspect of the chances of success of the intended appeal, it is not my role at this stage to determine definitively the merits of the intended appeal. That is the duty of the full court when it is ultimately presented with the intended appeal. See *Athuman Nusura Juma v Afwa Mohamed Ramadhan* [2016] eKLR.
14. Turning to the question of prejudice to the respondents, I note that the grant of letters of administration intestate was issued on 30th March, 2011. The applicant, who was among the administrators that petitioned for the grant, now seeks its revocation. These peculiar circumstances,



coupled with the inordinate delay in lodging the appeal, persuade me that the respondents would undoubtedly suffer prejudice if the orders sought were to be granted.

15. In the end the applicant has not demonstrated the existence of the parameters set out in Leo Sila Mutiso (supra). I therefore decline to exercise my discretion to grant the application and accordingly dismiss it with costs to the respondent.

**DATED AND DELIVERED AT NAIROBI THIS 13<sup>TH</sup> DAY OF MARCH, 2026.**

**AHMED ISSACK**

.....

**JUDGE OF APPEAL**

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

Signed.

**DEPUTY REGISTRAR**

