



REPUBLIC OF KENYA



**Nguthiru v Mendi (Civil Appeal 8 of 2018)**  
**[2026] KEHC 3816 (KLR) (Family) (19 March 2026) (Ruling)**

Neutral citation: [2026] KEHC 3816 (KLR)

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**  
**FAMILY**  
**CIVIL APPEAL 8 OF 2018**  
**HK CHEMITEI, J**  
**MARCH 19, 2026**

**BETWEEN**

**SYLUS NGUTHIRU ..... APPLICANT**

**AND**

**GRACE MENDI ..... RESPONDENT**

**RULING**

1. This ruling relates to the applications dated 20<sup>th</sup> May, 2020 and 15<sup>th</sup> May, 2023 filed by the Applicant, Sylus Nguthiru.
  1. The application dated 20<sup>th</sup> May, 2020 seeks for Orders That:-
    2. Spent.
    3. Leave be granted to the firm of Akolo Wanyanga & Company Advocates to come on record for the Appellant herein in place of Jacqueline Njagi & Company Advocates.
    4. The Notice of Appeal filed herein be deemed to have been properly filed.
    5. The costs of this application be provided for.
2. The application is based on the grounds on its face and supported by affidavit sworn by Sylus Nguthiru on 20<sup>th</sup> May, 2020.
3. He avers inter alia that he respectfully prays that this honourable Court be pleased to grant leave for the firm of Akolo Wanyanga Njagi & Company Advocates to come on record for him in place of Jacqueline Njagi & Company Advocates. He states that the Respondent will suffer no prejudice should the application be allowed. Accordingly, he urges this court to allow the application in the interests of justice.



4. The application is not opposed.
5. The application dated 15<sup>th</sup> May, 2023 seeks for ORDERS That:
  1. Spent.
  2. The firm of Akolo Wanyanga & Company be allowed to come on record for the Appellant/Applicant.
  3. The time to file the notice of appeal be extended.
  4. Any other orders that meet the ends of justice.
6. The application is based on the ground on its face and supported by affidavit sworn by Sylus Nguthiru on 15<sup>th</sup> May, 2023.
7. He avers inter alia that his previous advocates were Jacqueline Njagi & Company Advocates, whom he instructed to release his file to Akolo Wanyanga & Company Advocates after he appointed the latter to represent him. Upon the transfer of the file, it was not immediately apparent that the file contained pleadings relating to two separate appeals involving the same parties, namely Civil Appeal No. 8 of 2018 and Civil Appeal No. 20 of 2015, as well as Children's Case No. 390 of 2014.
8. Consequently, through inadvertence, counsel filed a Notice of Appeal in Civil Appeal No. 20 of 2015 instead of Civil Appeal No. 8 of 2018, and even proceeded to file an application to come on record, which he duly signed, together with a request for typed proceedings. The mistake was only discovered later when counsel began preparing the record of appeal.
9. He further states that opposing counsel did not alert his advocates that they were acting on the wrong file. He contends that the error arose from a genuine mistake by counsel, as his previous advocates had not indicated that the file contained documents relating to multiple appeals involving the same parties.
10. Additionally, the secretary who prepared the application inadvertently used the case number appearing on the first document in the file. He maintains that this was an honest error on the part of his counsel and should not be visited upon him as an innocent litigant.
11. He further seeks stay of execution of the judgment, arguing that he will suffer prejudice if execution proceeds before the appeal is heard and determined. He states that he has arguable grounds of appeal, particularly challenging the trial court's finding on contribution, which apportioned liability at 65% to 35%, a ratio he considers excessive and unjustified.
12. He therefore urges the Court to grant the orders sought in the interests of justice, emphasizing that the Respondent will suffer no prejudice and that he is ready and willing to comply with any conditions that the court may impose. He reiterates that he should not be penalized for a genuine mistake made by his advocate.
13. The application is opposed vide replying affidavit sworn by Grace Mendi on 5<sup>th</sup> June, 2024. She avers inter alia that the application is malicious and amounts to an abuse of the court process. She argues that it has been filed after an inordinate delay of three years, for which no sufficient or reasonable explanation has been provided, thereby rendering the application devoid of merit.
14. She further asserts that she stands to suffer serious prejudice, having pursued justice in this matter since 2014 and views the application as a deliberate attempt by the Applicant to deny her the fruits of a lawful judgment. She maintains that the Applicant has failed to demonstrate that he has an arguable appeal and instead appears intent on evading compliance with the court's orders.



15. According to her, the Applicant is already in contempt of court and is merely seeking to frustrate the enforcement of the judgment by filing the present application and the purported intended appeal.
16. She also submits that attributing the delay to the mistake of counsel does not constitute sufficient cause to justify the prolonged delay, particularly as she was never served with the alleged Notice of Appeal.
17. She further argues that the Applicant has not satisfied the legal threshold required for the grant of the orders sought.
18. While acknowledging that the court has discretion to grant such relief, she submits that such discretion must be exercised on the basis of valid, satisfactory and well-founded grounds, which have not been demonstrated in the present case. Accordingly, she urges the court to dismiss the application with costs.
19. The Applicant has filed written submissions dated 15<sup>th</sup> October, 2025.
20. The Respondent has filed written submissions dated 28<sup>th</sup> October, 2025.

### **Analysis And Determination**

21. I have carefully considered the applications, the response thereto and the rival submissions; and address them as follows.
22. In Connection Joint V Apollo Insurance [2006] KEHC 3281 (KLR), the court pronounced itself as follows: “...I say that, because of the plain meaning of the wording of Order 3 rule 9 A of the Civil Procedure Rules. Furthermore, it may be recalled that the mischief which was targeted by the introduction of that rule, was the replacement of advocates who had worked hard to enable a case get to the stage of judgement. In my understanding, some unscrupulous persons used to either appoint new advocates or take over the personal conduct of cases, as soon as judgement had been granted in their favour. Thereafter, the advocates who had been replaced were left chasing after their legal fees, which was not fair to them, especially when the said advocates only learnt about their own replacements, after the same had taken effect. By making it mandatory for the party who seeks to replace his advocate, after judgement was passed, to apply to the court, with notice to his said advocate, the rules committee addressed two concerns. First, it was no longer possible for the advocate to be taken by surprise, by his ouster, as he had to be served with the application seeking to remove him from record: secondly, the fact that the court had the opportunity of giving due consideration to the reasons for and against the application, implied that the court was able, if necessary, to impose terms and conditions. For instance, if it transpired that the advocate's fees had not yet been paid, the court could impose appropriate conditions to the order enabling the party to either act in person or alternatively, to engage another advocate....”
23. In re Estate of the late Kibara Njagi - Deceased [2025] KEHC 15028 (KLR) the court pronounced itself as follows, “... 11. The relief sought in this application are for the extension of time for seeking leave to appeal and for that leave to appeal to the Court of Appeal. 12. On substantive law, section 7 of the *Appellate Jurisdiction Act* provides as follows: “7. Power of High Court to extend time. The High Court may extend the time for giving notice of intention to appeal from a judgment of the High Court or for making an application for leave to appeal or for a certificate that the case is fit for appeal, notwithstanding that the time for giving such notice or making such appeal may have already expired: Provided that in the case of a sentence of death no extension of time shall be granted after the issue of the warrant for the execution of that sentence. See for example Clement Wekesa Muuyi & another v Patrick Wekesa Okumu (Sued as Representative of the Estate of Okumu Masai (Deceased) [2020] eKLR (B.N. Olao, J.). 13. The applicable procedure is set out in Rule 41 of The Court of Appeal Rules Legal Notice 40 of 2022 provide as follows: “41. Application for leave to appeal in civil matters1. In a



civil matter—a. where an appeal lies with the leave of the superior court, application for such leave may be made—i. informally at the time when the decision against which it is desired to appeal is given; or ii. by motion or chamber summons according to the practice of the superior court, within fourteen days of such decision;” 14. In accordance with Order 50 rule 6 of the Civil Procedure Rules, the power to extend time to take any step under the Rules is provided for as follows: “6. Power to enlarge time [Order 50, rule 6] Where a limited time has been fixed for doing any act or taking any proceedings under these Rules, or by summary notice or by order of the court, the court shall have power to enlarge such time upon such terms (if any) as the justice of the case may require, and such enlargement may be ordered although the application for the same is not made until after the expiration of the time appointed or allowed: Provided that the costs of any application to extend such time and of any order made thereon shall be borne by the parties making such application, unless the court orders otherwise....”

24. As clearly evidenced by the above cited authorities one must explain clearly the cause of the delay and the efforts, he made to beat the same. I am not persuaded by the explanations by the Applicant. The period taken between the decision and the making of the application is too long in the circumstances.
25. It is not enough to cite the usual mantra that “mistake of counsel ought not to be visited upon the litigant”. One must explain the delay noting that the matter eventually belonged to the party and not the counsel.
26. The sum total of this application is that the same ought to fail. The only plausible prayer is to allow the Applicant’s counsel to come on record. The rest of the prayers are disallowed.
27. In the premises:
  - (a) The firm of Akolo Wanyanga & Company Advocates are allowed to come on record on behalf of the Applicant.
  - (b) The rest of the prayers in the two applications are disallowed.
  - (c) Costs to the Respondent

**DATED SIGNED AND DELIVERED VIA VIDEO LINK THIS**

**19<sup>TH</sup> DAY OF MARCH 2026.**

**H K CHEMITEI**

**JUDGE**

