

**IN THE COURT OF
APPEAL AT
NYERI**

(CORAM: KATWA KIGEN, J.A. (IN CHAMBERS))

CIVIL APPEAL (APPLICATION) NO. E138 OF 2025

BETWEEN

IBRAHIM GATOBU.....APPLICANT

AND

MWICHWIRI FARMERS CO. LIMITED.....RESPONDENT

(Being an application for extension of time to lodge a notice of appeal from the judgment of the Environment and Land Court at Nyeri (Ndung'u, J.) dated 29th January 2020 in ELC Appeal No. 11 of 2018

R U L I N G

1. This is an application made under **Rule 4, Court of Appeal Rules**, to extend time within which (a) Notice of Appeal can be issued (b) The Record of Appeal can be filed.
2. The dates and timelines on the matter are material for this ruling. The Application is dated 21st January 2025. It seeks extension of time for the said Notice of Appeal and Record of Appeal in relation to a judgment made over 5 years passed, on 29th January 2020.

3. Equally importantly this would be a second appeal the matter having originated from Magistrate's Court in 2015.

4. The ground and explanation given for the delay is the singular contention that the previous advocate for the applicant failed to notify the Applicant of the Judgement and he came to learn of the decision when he instructed another advocate, now so acting.
5. Commenting on the context of the case it is noted that the basis of the claim was that the Applicant lodged a suit at Magistrate Court on 15th June 2015, Meru CMCC 172 of 2015 seeking to be allocated land by the Respondent, and in default be paid compensation. That he had made payments to the Respondent so as to get shares, which, according to him, would entitle him to 2 acres.
6. The Respondent did not participate in the proceedings. The learned magistrate, after considering the totality of the case dismissed his claim in toto, for failure to discharge the burden of proof to his main and alternate claims
7. Aggrieved he then filed the appeal Meru ELC 11 of 2018. By the aforesaid judgment made on 29th January, 2020 the ELC Court upheld the Magistrate's decision and dismissed the appeal. Seemingly similarly, the Respondent did not participate in the said ELC Appeal proceedings.
8. I also note from the ELC judgment that the Applicant herein had filed another suit CMCC 340 of 2007, pursuing the same land claim against the Respondent, unsuccessfully.
9. For purposes of exercising the jurisdiction under **Rule 4 of the Court of Appeal**, to extend time I need to be persuaded inter- alia that: (i) the delay has been adequately explained (ii) that

there are no gaps on the account of the lapsed time, iii) that the delay is not inordinate.

10. The main issue pursued at the ELC, and proposed to be urged in the intended 2nd appeal herein is that the Applicant was entitled to interlocutory judgement. The ELC Court and also magistrates court rejected the contention on the premise that interlocutory judgement is not available on land matters in law under **Order 10 Rule 6** of the **Civil Procedure Rules** a position postulated in multiple authorities cited by the said courts in their judgements. Further that the applicant had no specific liquidated amount upon which interlocutory judgement could attach. Without seeming to implicate any appeal that may obtain herein may I observe that it would seem to me the provisions of **Order 10 Rule 6, Civil Procedure Rules**, and the authorities on the matter are fairly definitive. I am unclear how the Applicant intended at ELC Court, and also at the proposed appeal herein, to circumvent this established interpretation of said provision of law.

11. In respect to this application I am concerned that (a) the delay of over 5 years is gross (b) the explanation given for delay is incomplete and also casual. It is stated that the delay was on account of the advocate on record not notifying the applicant. There is no breakdown on timings over the 5 years.

12. I note that no explanation is given of what efforts the Applicant made to maintain interest in his case. It comes out as inconceivable that a litigant can be detached from the status of his case for up to 5 years as suggested herein. No

correspondence, no averment or any efforts to visit or to contact the said advocate are conveyed in the application. In fact, I was

not able to see anywhere who the advocate was, nor see any Notice of Change Of Advocates, or application to take over the matter by the said new advocate. There are too many blanks that frustrate any discretion in favour of the applicant.

13. The court is also concerned that 5 years having elapsed there is no knowing if the court files still exist or could be archived, or even discarded.

14. It is of equally significant concern to the Court that no request for proceedings was ever made, at least none is displayed. The Court is alive to the provisions of **Rule 84(2)** that time might not be extended to file an Appeal if the letter bespeaking typed proceedings was not issued and copied to all parties to the cause. See also the persuasive Case of **Zephania Mohoni Marwa vs. Machugu Chacha** Civil Appeal (Application) 103 of 2020 [2025] KECA 2151 (KLR) where it is stated that:-

“11. Allowing the application may even be in vain considering, the applicant’s failure to serve the letter bespeaking proceedings to the respondent to trigger the application of the proviso to Rule 84(2) of COAR. This proviso allows the taking into account the time taken in the preparation of the proceedings in the computation of time by court. However, this is dependent on whether an applicant had requested for the proceedings and served the letter bespeaking proceedings on the respondent within 14 days of the ruling or judgment sought to be appealed against”.

“12. In Mae Properties Ltd v Joseph Kibe & Another [2017] eKLR, the Court held that service of the letter bespeaking proceedings

is mandatory for invoking Rule 84(2). Failure to serve means the 60-day limit runs uninterrupted”.

15. I am also unable to hold the applicant blameless for the alleged advocate's shortcomings. A litigant needs to take responsibility for his case. The quotation set out by the applicant to persuade me does not excuse him. The applicant refers to the case of **Kariuki v Wangeci & 7 Others (Civil Application E250 of (2023) (2024) KECA 1692 (KLR) (22 November, 2024) (Ruling)** where the Court observed that:

*The learned single Judge did not address the issue of the Advocate's mistake as a ground for extending time. There is no doubt that an Advocate's mistake may on some occasions constitute a ground for extending time in **Mwangi v. Mwangi [1999] 2 EA (CAK) 234** it was held while citing **Njoroge "B" and others v. Chege [1997] LLR 614 B CAK** **Macfoy v United Africa Company Ltd. (1962) AC 152;** **Pantin v Wood [1962] 1 OB 594** that: "Rules of procedure are said to be good servants but bad masters. This is not to say that they can be flouted with impunity. All Rules have their specific purpose(s) but a rule of procedure should not drive a litigant out of the judgment seat if other rule(s) allow such a litigant to come back to Court. The tendency of the Court of last resort ought to give a chance to the litigant to be heard on merits as far as possible.*

Our Rules of procedure have had their origin in England and the tendency in England is to move

*away from form to substance... simple inaction
by a
lawyer coupled with client's careless attitude may be*

*enough to say; I am not going to exercise my discretion' but when the litigant himself shows that he is doing his best the Court ought to exercise its discretion which is wide enough subject only to the requirement of justice to both sides procedural requirements are designed to further the interest of justice and any consequences which would achieve a results contrary to those interests should be treated with considerable reservation". **Emphasis added).***

16. The point made in the quote, which I agree with is that law here contemplates minor oversights. The situation herein militates against wishing away the shortcomings, considering the 5 years' delay, the absence of a letter bespeaking proceedings under **Rule 84 (2)**, the gaps in the long time explanation, and the seeming indolence on the status of his case. All these all falls short of minor oversights. I also refer to the case of **Zephania Mohoni Marwa vs. Machugu Chacha** Civil Appeal (Application) 103 of 2020 [2025] KECA 2151 (KLR):- where in a persuasive holding the court stated that:

"The explanation for the delay being that the applicant was led down by counsel does not sell. Of course I am aware that in Kenyan law, the general principle is that the mistakes of counsel should not be visited upon an innocent litigant. However, courts may hold a litigant responsible (i.e "visit the sins of counsel upon a litigant") when the litigant fails to demonstrate due diligence and personal

responsibility in following up on their case.
**Indeed, in the case of Karinga Gaciani & 11
Others v Ndege Kabibi Kimanga & Another,
Civil Application No E004 of 2023, the
Supreme**

Court of Kenya stated thus: “...it is not enough for a party to simply blame the Advocates on record for all manner of transgressions. Courts have always emphasized that parties have a responsibility to show interest in and to follow up on their cases even when they are represented by counsel and it does not matter whether the party is literate or not”. This is a clear case, in my view, of the applicant’s indolence which this Court should not countenance.”

17. I adopt with agreement what the court stated in the said case of **Zephania Mohoni Marwa vs. Machugu Chacha** Civil Appeal (Application) 103 of 2020 [2025] KECA 2151 (KLR):- on inordinate delay combined with lack of account for the lapse. The court stated in that case went on to state that:-

“6. Under Rule 4 of the COAR, extension of time is a discretionary power grantable on well settled principles. In Fakir Mohammed v Joseph Mugambi & 2 Others [2005] eKLR, the Court reiterated such principles be the length of the delay, the reason for the delay, the chances of the appeal succeeding, the degree of prejudice to the respondent, and the conduct of the parties. See also Leo Sila Mutiso v Rose Hellen Wangari Mwangi [1991] eKLR.

“8. This Court has consistently held that unexplained delays are fatal. For instance, in Bi- Mach Engineers Ltd v James Kahoro Mwangi [2011] eKLR, extension was refused where delay lacked explanation. The applicant’s omission to explain the delay demonstrates negligence and lack of diligence, which this Court has repeatedly declined to excuse.”

18. For the said reasons, incorporating inordinate delay, unexplained delay, lackadaisical concern for his case, the paucity of

displayed triable appeal premises, and the lack of letter bespeaking proceedings, I am constrained to decline the application. I hold that the applicant has denied himself the court's discretion. Extending time in the situation herein would offend the policy for fair and timely disposal of cases. The delay obtaining is gross, unreasonable and unexplained, aggravated by lack of letter bespeaking the proceedings.

19. The application is dismissed. There will be no orders as to costs.

Dated and delivered at Nyeri this 27th day of March, 2026

KATWA KIGEN

.....

..... **JUDGE**

OF APPEAL

