

**IN THE COURT OF APPEAL  
AT NAIROBI**

**(CORAM: MUMBI NGUGI, JA, (IN CHAMBERS))**

**CIVIL APPLICATION NO. E211 OF**

**2024 BETWEEN**

**DANIEL KIMEU MUHIA.....APPLICANT**

**AND**

**BEIGE INVESTMENTS LIMITED.....RESPONDENT**

*(Being an application for extension of time to lodge and serve the Memorandum of Appeal and Record of Appeal from the judgment of the Environment and Land Court at Nairobi (Oguttu-Mboya, J.) dated 25<sup>th</sup> January 2024*

*in*

***Nairobi ELC Case No. 219 of 2019 (O.S)***

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**RULING**

1. In the application dated 7<sup>th</sup> May 2024, the applicant seeks extension of time to lodge and serve the Memorandum of Appeal and Record of Appeal against the judgment of the Environment and Land Court (Oguttu-Mboya, J.) dated 25<sup>th</sup> January 2024 in Nairobi ELC Case No. 219 of 2019 (O.S.).
2. The application is brought under rule 4 of this Court's Rules, 2022, and is based on the grounds on its face and in the supporting affidavit sworn by the applicant, **Daniel Kimeu Muhia** on 7<sup>th</sup> May 2024.
3. The brief facts forming the background to this application are that the applicant was the plaintiff in the proceedings before the Environment and Land Court (ELC) He had

lodged his

claim by way of an Originating Summons in which he sought an order that he and the respondent, the defendant in the suit, were the registered proprietors of the property known as Nairobi/Block/27/114. Upon hearing the matter, in the judgment dated 25<sup>th</sup> January 2024, the trial court dismissed the applicant's claim.

4. Dissatisfied with the judgment, the applicant lodged a notice of appeal dated 1<sup>st</sup> February 2024. The applicant also sent a letter to the Deputy Registrar dated 1<sup>st</sup> February 2024 requesting for certified copies of the judgment and typed proceedings to enable him prepare the record of appeal. The applicant avers that the proceedings were not immediately available, so he followed up with another letter dated 25<sup>th</sup> March 2024.
5. The applicant avers that he was eventually notified by the court registry on 29<sup>th</sup> April 2024 that the proceedings were ready for collection, and he filed the present application on 8<sup>th</sup> May 2024 shortly after the proceedings were made available. The applicant contends that the delay in lodging the record of appeal was therefore occasioned by the time taken to obtain typed proceedings, and was not deliberate or inordinate.

6. The respondent opposes the application by an affidavit sworn by **Odhiambo E. Ouma** on 9<sup>th</sup> April 2025. Mr. Ouma avers that the respondent was not served with the letter bespeaking proceedings, and the certificate of delay that the applicant obtained on 8<sup>th</sup> May 2024 was of no effect. The respondent avers that the applicant should have filed his appeal within sixty days from the date of filing the notice of appeal, but he has filed the present application 765 days from the date of filing the notice of appeal. The respondent contends, therefore, that the notice of appeal should be deemed withdrawn.
7. The applicant filed submissions dated 4<sup>th</sup> June 2023 (sic) while the respondent filed submissions dated 6<sup>th</sup> March 2026, which I have read and considered alongside the respective averments of the parties.
8. The principles applicable on an application under rule 4 of this Court's Ruules are settled. The rule requires the exercise of the Court's discretion, which is unfettered but must be exercised judiciously. In such exercise, the Court is required to consider the length of the delay; the reason for the delay; (possibly), the chances of the appeal succeeding if the application is granted; and finally, the

degree of prejudice to

the respondent if the application is granted- see **Leo Sila Mutiso v. Rose Hellen Wangari Mwangi** [1999] 2 EA 231; **Fakir Mohamed v Joseph Mugambi & 2 others** [2005] KECA 340 (KLR) and **Salat v Independent Electoral and Boundaries Commission & 7 others** [2014] KESC 12 (KLR).

9. In this matter, the judgment that the applicant seeks to appeal against was delivered on 25<sup>th</sup> January 2024. The applicant filed a notice of appeal on 1<sup>st</sup> February 2024, and also sent a letter of the same date requesting for certified copies of the proceedings. The applicant avers that it followed up the request with a letter dated 25<sup>th</sup> March 2024; was notified that the proceedings were ready on 29<sup>th</sup> April 2024; and that he collected the proceedings and a certificate of delay on 8<sup>th</sup> May 2024.
10. The record thus indicates that the notice of appeal was filed on time. Under rule 84, the applicant was required to file his appeal within sixty days from 1<sup>st</sup> February 2024, that is by 31<sup>st</sup> March 2024. The proviso to rule 84(1) and rule 84(2) address the circumstances where a party does not file its appeal within the sixty day period:

**(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;...**

**Provided that where an application for a copy of the proceedings in the superior court has been made in accordance with subrule (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 subrule (1) unless the appellant's application for such copy was in writing and a copy of the application was served upon the respondent. (Emphasis added).**

11. I have considered the applicant's letter dated 1<sup>st</sup> February 2024. It is not, as the respondent avers, copied to it or its advocates; nor is there evidence that it was served on them. That being the case, the applicant was not entitled

to rely on the proviso to rule 84(1), and it should have  
filed its appeal  
within sixty days of 1<sup>st</sup> February 2024.

**12.** Under the provisions of rule 85 titled '**effect of default in instituting appeal**':

**(1) If a party who has lodged a notice of appeal fails to institute an appeal within the appointed time, that party shall be deemed to have withdrawn the notice of appeal and the Court may, on its own motion or on application by any other party, make such order.**

13. The applicant did not file his appeal as required under the Rules, and as provided under rule 85, his notice of appeal is deemed withdrawn- see, in this regard, the decision in **Waudi v Nguma & another** [2024] KECA 499 (KLR).

14. In the circumstances, the application dated 7<sup>th</sup> May 2024 is without merit. It is hereby dismissed with costs to the respondent.

**Dated and delivered at Nairobi this 25<sup>th</sup> day of March, 2026.**

**MUMBI NGUGI**

.....  
**JUDGE OF APPEAL**

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

**Signed**

**DEPUTY REGISTRAR.**