



REPUBLIC OF KENYA



**Mwathi v Njoki & 2 others (Civil Application E709 of 2025)  
[2026] KECA 708 (KLR) (25 March 2026) (Ruling)**

Neutral citation: [2026] KECA 708 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAIROBI  
CIVIL APPLICATION E709 OF 2025**

**P LILAN, JA**

**MARCH 25, 2026**

**BETWEEN**

**JAMES MWATHI ..... APPLICANT**

**AND**

**REHEMA NYAMBURA NJOKI ..... 1<sup>ST</sup> RESPONDENT**

**LUCY WANGARI NJOKI ..... 2<sup>ND</sup> RESPONDENT**

**SALMA NYAMBURA NJOKI ..... 3<sup>RD</sup> RESPONDENT**

*(Being an application for extension of time to file and serve the notice of appeal and appeal against the judgment and orders of the High Court at Nairobi (Nyaundi, J.) dated 27th June 2025 in HC. P&A No. 270 of 2019)*

**RULING**

1. The applicant's notice of motion dated 25<sup>th</sup> November 2025 and brought under inter alia rule 4 of this Court's Rules seeks leave to file an appeal out of time against the judgment delivered on 27<sup>th</sup> June 2025 in HC. P&A No. 270 of 2019. The applicant further seeks orders deeming the notice of appeal as duly filed and served or alternatively granting him time within which to properly file the notice of appeal, memorandum of appeal and record of appeal out of time. He also prays for directions on the timelines for filing the record of appeal and for costs of the application to abide the outcome of the intended appeal.
2. In support of the application, the applicant contends by way of affidavit that he was aggrieved by the ruling delivered by the trial court on 27<sup>th</sup> June 2025, and instructed a clerk to upload a notice of appeal and request copies of the judgment and proceedings. The notice of appeal was uploaded on 8<sup>th</sup> July 2025, but the filing fees were not paid and the applicant only later discovered that the registry could not act on the document until payment of fees had been made. By the time he settled the fees, the



statutory period for filing and serving the notice of appeal had already lapsed and the notice of appeal was ultimately paid for and formally lodged on 30<sup>th</sup> October 2025, approximately ninety days out of time.

3. He therefore seeks extension of time to regularize the notice of appeal and file the memorandum and record of appeal asserting that the intended appeal is arguable, that execution of the ruling is underway and risks depriving him of property he claims belongs to him and that no prejudice will be occasioned to the respondents if the extension is granted.
4. The application is opposed vide a replying affidavit sworn by Lucy Wangari Njoki, the 1<sup>st</sup> respondent. She avers inter alia that the applicant's request for extension of time is an abuse of the court process intended to further delay the distribution of an estate that has remained unsettled for over twenty-five years; that the ruling sought to be appealed was delivered on 27<sup>th</sup> June 2025 and formal orders were subsequently extracted on 27<sup>th</sup> July 2025 and signed on 13<sup>th</sup> October 2025, thereby crystallizing the directions for equal distribution of the estate and the 120-day timeline for transmission; that the present application filed on 25<sup>th</sup> November 2025 was brought after a delay of about five months; that the explanation given by the applicant blaming a clerk for failure to pay registry fees is flimsy and does not amount to sufficient reason for extension of time; that a diligent litigant would not have waited from 8<sup>th</sup> July 2025 to 31<sup>st</sup> October 2025 before discovering that the notice of appeal had not been processed.
5. The 1<sup>st</sup> respondent further avers that the intended appeal has no probability of success since the applicant's grievance arises from the High Court's refusal to apply Kikuyu customary law to exclude daughters and their children from inheritance; that the High Court correctly found such customs unconstitutional and discriminatory under Article 27 of *the Constitution*; that the applicant's characterization of the 2<sup>nd</sup> and 3<sup>rd</sup> respondents as strangers is made in bad faith since he admitted in his own testimony that they are the children of his late sister, Rose Nyambura Njoki; that the applicant has failed to comply with the order requiring transmission of the estate within 120 days and is instead using the present application to stall distribution of the properties Dagoretti/Mutuini/299 and KJD/Olchoro- Olnyore/473; that the respondents, who are lawful beneficiaries will suffer prejudice if the estate continues to be withheld; and that the balance of convenience therefore favors dismissal of the application and finalization of the succession process in accordance with the ruling of the High Court.
6. The applicant has filed written submissions in support of this application. In the said submissions, the applicant cites various decisions of this Court including: Leo Sila Mutiso vs Rose Hellen Wangari Mwangi, Civil Application No. 251 of 1997, Major Joseph Mweteri Igwate vs Muhura M'Ethare & A.G, Civil Application No. 8 of 2000(unreported) and Fakir Mohamed v Joseph Mugambi & 2 others [2005] eKLR and urges this Court to exercise its unfettered discretion under rule 4 of the Rules of this Court in his favour.
7. What emerges from this application for determination is whether the applicant has met the required threshold for grant of extension of time. The mandate is derived from rule 4 of this Court's Rules which allows this Court, for sufficient reasons, to extend the timelines set out in in the rules.
8. The factors to be considered when determining an application for extension of time are well settled and consistently applied, in numerous decisions of this Court such as Leo Sila Mutiso vs Rose Hellen Wangari Mwangi, Civil Application No. 251 of 1997, Fakir Mohamed vs. Joseph Mugambi & 2 Others [2005] eKLR; Muringa Company Ltd vs. Archdiocese of Nairobi Registered Trustees [2020] eKLR; Andrew Kiplagat Chemaringo vs. Paul Kipkorir Kibet [2018] eKLR and Athuman Nusura Juma vs.



Afwa Mohamed Ramadhan [2016] eKLR. In Paul Wanjohi Mathenge vs. Duncan Gichane Mathenge [2013] eKLR, this Court discussed those factors as follows:

“The discretion under rule 4 is unfettered, but it has to be exercised judicially, not on whim, sympathy or caprice. I take note that in exercising my discretion I ought to be guided by consideration of the factors stated in previous decisions of this court including, but not limited to, the period of delay, the reasons for the delay, the degree of prejudice to the respondent and interested parties if the application is granted, and whether the matter raises issues of public importance...”

9. The decision sought to be appealed against was delivered on 27<sup>th</sup> June 2025. The applicant avers that the notice of appeal was uploaded on 8<sup>th</sup> July 2025, but was not paid for and was only formally lodged on 30<sup>th</sup> October 2025. The present application was subsequently filed on 25<sup>th</sup> November 2025. It is clear that there was considerable delay both in regularizing the notice of appeal and in moving this Court for extension of time. Even taking the applicant’s account at face value, there was a lapse between 8<sup>th</sup> July 2025 when the notice of appeal was uploaded and 30<sup>th</sup> October 2025, when the requisite payment was eventually made. This was followed by a further period between 30<sup>th</sup> October 2025 and 25<sup>th</sup> November 2025, before the present application was filed. In the circumstances, the delay is, in the circumstances, inordinate.
10. Moreover, the delay has not been explained satisfactorily . The applicant attributes the default to a clerk who allegedly uploaded the notice of appeal but failed to pay the filing fees and states that he only discovered later that the registry could not act without payment. That explanation is not plausible because no satisfactory account is given as to when the applicant discovered the omission, what steps he took to follow up the filing, or why it took several months to rectify the procedural defect. A litigant who is genuinely intent on pursuing an appeal is expected to act with diligence and to keep track of whether a step such as payment and lodging has actually been completed and/or complied with. Blaming an unidentified clerk, without more, does not discharge that obligation. In the circumstances, the delay has not been sufficiently explained. There is merit in the opposition advanced by the 1st Respondent in her replying affidavit where she describes the appellant’s explanation for delay as ‘flimsy’ hence not plausible .
11. In Andrew Kiplagat Chemaringo Vs. Paul Kipkorir Kibet [2018] eKLR, this Court stated as follows regarding delay and reasons therefore:

“ 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 favor. There has to be valid and clear reasons, upon which discretion can be favorably exercisable.” [Emphasis added]
12. As the reason for the delay has not been satisfactorily explained by the applicant, it would be superfluous to delve into the other factors to be considered in applications of this nature. In the result, the application has not met the required threshold and I decline to grant the prayer for extension of time. Accordingly, the application dated 25<sup>th</sup> November 2025, is hereby dismissed with costs to the respondents.

**DATED AND DELIVERED AT NAIROBI THIS 25<sup>TH</sup> DAY OF MARCH, 2026**

**PAUL LILAN**

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**JUDGE OF APPEAL**

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

**DEPUTY REGISTRAR**

