



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

Njoroge & 8 others v Embakasi Ranching Company Limited & 6 others (Civil Application E049 of 2023) [2026] KECA 709 (KLR) (25 March 2026) (Ruling)

Neutral citation: [2026] KECA 709 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPLICATION E049 OF 2023**

M NGUGI, JA

MARCH 25, 2026

BETWEEN

JAMES MINGI NJOROGE 1ST APPLICANT
SISTO TUTA MWAMBIA 2ND APPLICANT
PENINAH NYAIREGI MWANGI 3RD APPLICANT
DAVID MWANGI WANDERI 4TH APPLICANT
PHIDELI WANGARI 5TH APPLICANT
JANE NJERI MURIGI 6TH APPLICANT
CHRISTOPHER ELIUD GAKURU NGIGE 7TH APPLICANT
JOSEPH KINYANJUI NJENGA 8TH APPLICANT
JOSEPH JUAN KANANI 9TH APPLICANT

AND

EMBAKASI RANCHING COMPANY LIMITED 1ST RESPONDENT
THE REGISTRAR OF COMPANIES 2ND RESPONDENT
WANJIRU RICHU 3RD RESPONDENT
ANDREW OKUMU 4TH RESPONDENT
GABRIEL GITONGA 5TH RESPONDENT
JAMES NJEHU MBOCHI NJERU 6TH RESPONDENT
CHARLES KIHAGI THUA 7TH RESPONDENT

(Being an application for extension of time to file and serve the Notice of Appeal and Memorandum of Appeal out of time in an intended appeal from the ruling)



RULING

1. The applicants have filed an undated application seeking extension of time to file and serve a notice of appeal and memorandum of appeal against the ruling and orders of the High Court (G. Nzioka, J.) dated 31st July 2019 in Nairobi High Court Commercial & Admiralty Division Civil Case No. E096 of 2019.
2. The application is brought under rules 4, 41 and 42(1) of the Court of Appeal Rules, 2010. The applicants have also filed an affidavit by the 1st applicant, James Mingi Njoroge, ostensibly in support of the application. The affidavit on record is, however, not dated, signed or commissioned.
3. Briefly, the background to the application is that the applicants and the 3rd-7th respondents are engaged in a dispute in the High Court over the directorship of the 1st respondent. In its ruling dated 31st July 2019, the High Court issued interlocutory orders relating to the management of the 1st respondent and the status of persons holding themselves out as directors pending the hearing and determination of the suit.
4. The applicants state that they were dissatisfied with the ruling and wished to appeal against the ruling. They aver that though they were granted leave to appeal, their previous advocates, the firm of Khaminwa & Khaminwa and B.M. Musyoki Advocates, did not lodge the notice and memorandum of appeal within the prescribed time.
5. The applicants state that they only learned in 2022 that no notice or memorandum of appeal had been filed. They therefore instructed their current advocates, the firm of Timothy Kariuki Advocates, in February 2023, and the firm lodged a notice of appeal out of time and applied for proceedings and the ruling with a view to pursuing the intended appeal.
6. The applicants assert that the firms of Khaminwa and Khaminwa Advocates and B.M. Musyoki Advocates then on record for the 1st and 2nd to 9th applicants respectively, were granted leave to file an appeal against the said orders, but the court immediately proceeded with the respondents' case without affording the applicants time to file their appeal; that the said advocates have never filed any appeal to date; that the law firm of Timothy Kariuki & Co Advocates was instructed to come on record on 3rd of February 2023 and it lodged a notice of appeal out of time on 6th February 2023; that it also filed, on the same date, an application for certified copies of proceedings and the ruling.
7. The applicants aver that the delay in filing the appeal is therefore not deliberate on their part, and the mistakes of their previous advocates should not be visited upon them.
They further contend that they have an arguable appeal with very high chances of success.
8. The application is opposed by an affidavit sworn by Walter Kigera Waireri on behalf of the 1st respondent on 14th June 2023. It is averred that the impugned ruling was made on 31st July 2019, almost four years prior to the filing of the present application; and that the delay was inordinate and no satisfactory explanation has been given other than blaming previous advocates. Further, that the suit before the High Court has progressed considerably and the present application is yet another attempt to delay the conclusion of the matter.



9. The applicants filed submissions dated 6th March 2026 while the 1st respondent filed submissions dated 14th June 2023.

10. I have read and considered the application, the affidavit in support and opposition thereto, and the submissions of the parties. This is an application under rule 4 of this Court’s Rules seeking extension of time to file and serve a notice and memorandum of appeal, and thus requires the exercise of discretion, as is now well settled. The factors to be considered on an application such as this are well encapsulated in the decision of this Court in *Leo Sila Mutiso v Rose Hellen Wangari Mwangi* [1999] 2 EA 231:

“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.”

See also *Salat v Independent Electoral and Boundaries Commission & 7 others*[2014] KESC 12 (KLR).

11. In the present case, the applicants seek to file a notice of appeal and record of appeal against a ruling that was delivered on 31st July 2019. The present application, though undated, appears to have been filed on or around 17th May 2023. I say ‘appears’ as this date is referenced in the 1st respondent’s replying affidavit, though the application on record is undated and unsigned. I note that there is an application on record dated 17th May 2023, but the application, however, seeks stay of proceedings pending hearing of an application dated 17th February 2023.

12. At any rate, the application before me was lodged in 2023, and there was thus a delay of four years. By any measure, bearing in mind the requirement of rule 75(2) of the 2010 Rules (rule 77(2) of the 2022 Rules) that the notice of appeal be filed within 14 days from the date of the decision; and that the appeal, subject to the provisions of rule 84, sixty days thereafter, a delay of four years is, by any measure, inordinate.

13. In explaining the delay, the applicants allege that their advocates then on record failed to file a notice or memorandum of appeal, even though they had been granted leave to do so. The applicants state that they learnt of this failure in 2022, and they thereafter appointed their current advocates. I note, however, that it is indicated in the unsworn and undated affidavit of James Mingi Njoroge, the only document that contains any explanation for this four-year delay, that in 2020, the applicants learnt that a further hearing date had been given; that in 2022, they resolved to appoint a new firm of advocates; that they did so in February 2023-almost four years later; and this application, it would appear, was filed three months later. If one disregards, as one should, the unsworn affidavit, there is no explanation before the Court for the four-year delay. Even if one considers the contents of the affidavit, however, there really is insufficient explanation for the inordinate delay.

14. Accordingly, I find no basis for extending time as sought by the applicants. The undated application before me is without merit, and it is hereby dismissed with costs to the 1st respondent.

DATED AND DELIVERED AT NAIROBI THIS 25TH DAY OF MARCH, 2026.

MUMBI NGUGI

.....

JUDGE OF APPEAL



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

Signed

DEPUTY REGISTRAR.

