

**IN THE COURT OF APPEAL**

**AT NAIROBI**

**(CORAM: LILAN, JA. (IN CHAMBERS))**

**CIVIL APPLICATION NO. E625 OF**

**2025 BETWEEN**

**TITUS MAKHANU & ASSOCIATES**

**ADVOCATES.....APPLICANT**

**AND**

**HALL EQUITORIAL LIMITED.....RESPONDENT**

*(Being an application for extension of time to file and serve the Record of Appeal out of time in the intended appeal against the Ruling of the High Court of Kenya at Nairobi (Cherere, J.) delivered on 27<sup>th</sup> March 2025*

**in**

**HCCC No. E115 of 2024)**

\*\*\*\*\*

**\*\* RULING**

1. The application which is the subject of this ruling is for extension of time to enable the appellant file an appeal. In the main, the application dated 28<sup>th</sup> October 2025, brought under **rule 4** of the Rules of this Court seeks enlargement of time and leave to file and serve the memorandum and record of appeal out of time . The said intended appeal arises from the ruling of the High Court at Nairobi delivered by Cherere J. on 27<sup>th</sup> March 2025 in HCCC No. E115 of 2024.
2. The impugned ruling of the High Court delivered on 27<sup>th</sup> March 2025, ordered the applicant to pay Kshs. 2,300,000/=

together with interest and to release the original title relating to land parcel L.R. No. 15400/119, to the respondent and bear the costs of the proceedings. The applicant promptly signified his dissatisfaction and intention to challenge the decision by filing a notice of appeal the very next day, that is, on 28<sup>th</sup> March 2025 and applied for certified copies of the proceedings and the ruling for purposes of lodging the record of appeal. The applicant did not however lodge the memorandum and record of appeal within the prescribed time attributing the delay to the time taken by the High Court registry to prepare and supply certified copies of the proceedings and the ruling. The appellant would like this court to accept that he was diligent and has provided evidence of follow up letters written on 7<sup>th</sup> April 2025 and 31<sup>st</sup> July 2025.

3. The applicant further contends that the High Court eventually notified him on 11<sup>th</sup> August 2025 that the proceedings and ruling were ready for collection, though the ruling was initially not certified as requested and a certified copy was only issued on 2<sup>nd</sup> September 2025. Thereafter, the applicant applied for a certificate of delay on 8<sup>th</sup> September 2025 which, after several follow ups, was issued by the High Court on 24<sup>th</sup> October 2025. The applicant therefore contends that the delay in filing the record of appeal was not intentional but was caused by the time taken by the registry to prepare the requisite documents necessary for instituting the appeal.

4. He further asserts that the intended appeal is arguable and raises serious issues, including whether the High Court erred in proceeding to determine the originating summons despite a pending application and preliminary objection challenging the court's jurisdiction and the applicant's right to be heard. Additionally the applicant maintains that the respondent will not suffer prejudice if the extension sought is granted, as the respondent will still have the opportunity to respond to the intended appeal on its merits.
5. Unfortunately this ruling is without the benefit of any input from the respondent who did not file any response in opposition to the application.
6. Having read the affidavits and submissions filed by the applicant, what follows is to consider whether the appellant has met the threshold for grant of the extension sought .In **Leo Sila Mutiso vs Rose Hellen Wangari Mwangi, Civil Application No. 251 of 1997**, this Court stated:

***"It is now well settled that the decision whether or not to extend the time for appealing is essentially discretionary. It is also well stated 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."***

7. On the length of the delay, the subject ruling was delivered on 27<sup>th</sup> March 2025 and the notice of appeal filed the very next day, on 28<sup>th</sup> March 2025. Under **rule 84** of the Rules of this Court, the record of appeal ought to have been lodged within sixty days from the date of filing the notice of appeal, subject to the exclusion of any period certified by the High Court as having been required for preparation and delivery of the proceedings. The present application was filed on 28<sup>th</sup> October 2025. On the face of it, therefore, there was delay in lodging the record of appeal beyond the period prescribed by the Rules.
8. Turning to the explanation offered for that delay, the applicant attributes it to the time taken by the High Court registry to prepare and supply certified copies of the proceedings and the ruling. It is clear from material placed before me that the applicant applied for the proceedings immediately after filing the notice of appeal and wrote follow up letters to the registry on 7<sup>th</sup> April 2025 and 31<sup>st</sup> July 2025. The registry eventually notified the applicant on 11<sup>th</sup> August 2025, that the proceedings and ruling were ready for collection, although the ruling was not initially certified. Indeed a certified copy was only issued on 2<sup>nd</sup> September 2025. The applicant then applied for a certificate of delay on 8<sup>th</sup> September 2025 which was issued on 24<sup>th</sup> October 2025. In those circumstances, the delay appears to have been largely attributable to the time

taken by the registry to prepare and certify the documents necessary for the institution of the appeal.

9. As regards the intended appeal, it is not for a single judge at this stage to make definitive findings on the prospects of success. It suffices to state that from the grounds cited in the affidavit in support of the application, the applicant seeks to challenge, among other things, the decision of the High Court to determine the originating summons notwithstanding the existence of a pending application and preliminary objection questioning the court's jurisdiction. This issue cannot be said to be frivolous and, in my view, raises arguable point deserving of consideration by this Court.
10. With respect to prejudice, the respondent has not opposed the application and no material has been placed before this Court to demonstrate that the respondent will suffer prejudice if the extension sought is granted. On the contrary, the respondent will still have the opportunity to respond to the intended appeal and to ventilate its case fully, before this Court. In the circumstances, any inconvenience that may arise from the extension of time can adequately be compensated by an award of costs.
11. Having carefully considered all the foregoing and bearing in mind that the discretion under **rule 4** of the Rules of this Court as intended to be exercised so as to facilitate the just determination of disputes on their merits, I am satisfied

that

this is a proper case in which the discretion of this Court should be exercised in favour of the applicant. Consequently, I allow this application and direct that the record of appeal be filed and served within **thirty (30) days** from the date of delivery of this ruling. The costs of this application shall abide the outcome of the appeal.

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

**PAUL LILAN**

.....

**JUDGE OF  
APPEAL**

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

