

**IN THE COURT OF APPEAL
AT NAKURU**

(CORAM: MURUNGI B. KAIRARIA, J.A. (IN CHAMBERS))

CIVIL APPLICATION NO. E030 OF

2026 BETWEEN

LUCY NJERI NJOROGE.....APPLICANT

AND

JANE NYAMBURA.....1ST

RESPONDENT JAMES ALLAN KAMAU DANSON

....2ND RESPONDENT EUNICE NJERI KONTUATHI

.....3RD RESPONDENT

(An application for extension of time from the judgment of the High Court at Nakuru (Muhochi, J.) delivered on 19th June 2025

in

Succession Cause No. 39 of 2019)

RULING

1. The applicant's Notice of Motion application dated 27th February 2026 seeks extension of time to file and serve the memorandum of appeal and the record of appeal out of time in the intended appeal against the judgement of S. M Mohochi

J. delivered on 19th June,2025 in Nakuru Succ. Cause No. 39 OF 2019.

2. Dissatisfied by that decision the, applicant lodged a notice

of appeal on 24th June, 2025. She also requested for
typed

proceedings by letter dated 20th June,2025 and uploaded
on

24th June 2025 but did not pay the assessed court fees of ksh 1000 at the time lodging the request. The payment was made on 12th August 2025.

3. The parties were notified that the typed proceedings were ready for collection on 12th November, 2025 via the Court official email following which a certificate of delay was prepared and issued on 23rd January, 2026 indicating that it took 92 days from 12th August 2025 to 12th November, 2025 to prepare and deliver the typed proceedings.
4. The applicant did not file the memorandum and record of appeal of appeal within sixty days after the date of lodging the notice of appeal as prescribed by **rule 84[1]** of the Court of Appeal or within 60 days after excluding the period certified by the Registrar of the superior court as having been required for the preparation and delivery of the typed proceedings as contemplated by the proviso to that rule.
5. The applicant filed this application on 27th February 2025 invoking the Court's unfettered discretionary jurisdiction to extend time under **rule 4** of the Court of Appeal Rules. The application is founded on the grounds on the body of the

Notice of Motion supported by the affidavit of Lucy Njeri Njoroge the applicant sworn on 27th February, 2026.

6. The grounds and factual background against which extension of time is sought can be briefly stated; the judgment intended to be appealed was delivered on 19th June, 2025 in favor of the respondents, dissatisfied with the decision the applicant lodged a notice of appeal dated 24th June 2025 and requested for typed proceedings by letter dated 20th June, 2025 uploaded in the CTS simultaneously with the notice of appeal on 24th June, 2025 but inadvertently the request for typed proceedings was not paid for on the same day. It was paid on 12th August, 2025 after which the proceedings were typed and were ready for collection on 12th November, 2025. A certificate of delay was issued indicating that the request for typed proceedings was made on 12th August, 2025 when payment was made and not 12th June, 2025 when the request was uploaded in the system and served upon the respondent's advocates hence her prayer that the request for typed proceedings be deemed to have been made on 12th June, 2025.

7. The applicant did not file the memorandum and record of appeal within sixty days of lodging the notice of appeal and neither did she do so within sixty days after discounting the period certified as having been necessary for the preparation of typed proceedings, hence her prayer for extension of time.
8. The applicant attributes the delay in paying for the request for typed proceedings dated 20th June, 2025 to an inadvertent relapse her advocates were under, the false impression were paid on 24th June, 2025 when the payment in respect of the notice of appeal was made.
9. Regarding the delay in filing the memorandum and record of appeal within the prescribed period following notification that the proceedings were ready for collection, the applicant avers that it was occasioned by an inadvertent administrative lapse within her advocate's office during the end of year transition and court recess when operations were scaled down and diary systems reorganized for the new calendar year.
10. She further avers that the omission was neither deliberate, contumelious nor intended to obstruct justice and adds that her advocate acted with promptitude by

filing the application

for extension of time without undue delay once the lapse was discovered.

11. Finally, the applicant avers that the delay is short, not inordinate and is excusable in the circumstance, that the intended appeal is arguable and raises substantial issues of law and facts concerning distribution of the estate. She reckons that she and her children have been effectively disinherited in the judgement intended to be appealed.
12. The application was served and responded to through a replying affidavit sworn by Jane Nyambura Njogu on 2nd April, 2026 in which the applicants strenuously oppose the application for extension of time contending that; it is a non starter, incompetent, illegal, vexatious, malafides, with neither substance nor merit and is just but an abuse of court process.
13. The respondents aver that; the explanation that counsel inadvertently failed to pay the court fees for the request for typed proceedings on 24th June, 2025 presuming that the same had been paid at the same time as the payment for the notice of appeal is neither believable nor excusable as the receipt for payment issued on 24th June 2025 exhibited by

the applicants indicates that it was for the notice of appeal and not for both the notice of appeal and request for proceedings.

14. Further the respondent contends that though both documents were uploaded onto the court portal on the same day, they were filed and invoiced separately and therefore, there was no reason for the applicant's advocate with many years experience to presume that the payment covered both documents.
15. The respondents add that the reason given for failure to file the memorandum and record of appeal within the prescribed timelines is equally unbelievable and inexcusable because no explanation has been given for the failure to file the said documents from 12th November, 2025 when the applicant's advocates were notified that the proceedings were ready and the period between 6th January 2026 and 4th February, 2026 when the period for filing the said documents expired.
16. Both filed written submissions in support of their rival positions outside the time set in the directions given to the parties which require that submissions be file at least three

days before the hearing. Those submissions were not before me on 23rd April, 2026 and were only brought to my attention subsequently impairing timely disposal of the application. Parties and their advocates are reminded of their duty to directions as to filing of submissions as failure to do so leads to avoidable delay in disposal matters before courts of law.

17. The applicants submissions are dated 21st April, 2026 while the respondents' submissions are dated 22nd April, 2026 and were not before me on 23rd April 2026 when the application.

18. I have considered the grounds of the application, the parties rival affidavits and submissions, cited case law as well as the principles of law governing this Court's jurisdiction when considering an application for extension of time under **rule**

4 of the Court of Appeal rules. The jurisdiction is discretionary in nature. The Court considers the duration of the delay, the reason or explanation for the delay, possibly if the intended appeal is arguable and the possible prejudice likely to be suffered by the respondent if extension of time is granted. [See **Leo Sila Mutiso**]

19. I find the reason given of inadvertence by the applicant's counsel in making payment for the written request for proceedings and also filing the memorandum and record of appeal given by the applicant plausible and not unbelievable or inexcusable as contended by the respondent. The applicant filed and served the notice of appeal on 24th June, 2025 which is barely five days after delivery of the judgment intended to be appealed. The applicant did the letter requesting for typed proceedings on 20th June, 2025, uploaded it onto the Court's E-filing system and served it upon the advocate for the respondents on 24th June, 2025.

20. I am not persuaded that the applicant deliberately set out to delay or impede the cause of justice. Mistakes can be made by both young and seasoned lawyers. As Madan J A eloquently stated in **Belinda Murai & 9 Others vs.**

Amos

Wainaina Civil Application No. Nai 9 of 1978:

“A mistake is a mistake. It is no less a mistake because it is an unfortunate slip. It is no less pardonable because it is committed by senior counsel though in the case of a junior counsel the court may be more readily compassionate The door of justice is not closed because a mistake

has been made by a person of experience who ought to have known better. The Court may not forgive or condone it but it ought certainly to do whatever is

***necessary to rectify it if the interests of justice
so dictate”***

21. That being my view of the matter, I grant the application for extension of time to file the memorandum and record appeal dated 27th February 2026. The applicant shall file and serve the memorandum and record of appeal within the next 14 days. Costs of the application shall abide the intended appeal.

Dated and delivered at Nakuru this 15th day of May, 2026.

MURUNGI B. KAIRARIA

JUDICIARY

.....
JUDGE OF APPEAL

*I certify that this is
a True copy of the
original*

Signed

DEPUTY REGISTRAR