

**IN THE COURT OF APPEAL
AT MOMBASA
(CORAM: DR. K. I. LAIBUTA, JA. - IN
CHAMBERS) CIVIL APPEAL (APPLICATION) NO.
E123 OF 2022**

BETWEEN

MUNIR MOHAMED SKETTY (*Administrator of the Estate of
MOHAMED NAHDY - DECEASED*.....**APPLICANT**

AND

JANENDRAH RAICHAND SHAH **1ST
RESPONDENT**
RAVJI RAMJI MANJI **2ND RESPONDENT**
REGISTRAR OF TITLES **3RD
RESPONDENT ATTORNEY GENERAL**
4TH RESPONDENT

*(Being an application for extension of time to file an
application under Rule 42 out of time from the Judgment and
Orders of the Court of Appeal at Mombasa (Gatembu,
Murgor & Laibuta, JJ.A) delivered on 20th September 2024*

in

Civil Appeal No. 123 of 2022)

**** RULING**

1. Before me is the applicant's Notice of Motion dated 17th July 2025 seeking leave to file an application for certification and leave to appeal to the Supreme Court out of time.

2. The Motion is supported by the applicant's affidavit sworn on 17th July 2025 essentially deposing to the grounds on which

the application is founded, namely: that, following delivery of
the

impugned Judgment of this Court on 20th September 2024, the applicant instructed the firm of Lawrence Obonyo & Company Advocates to file a Notice of Appeal together with an application for certification and leave to appeal to the Supreme Court, which they failed to do; that his right of appeal should not be prejudiced by the laxity or mistake of counsel; and that his appeal is meritorious.

3. Annexed to the applicant's affidavit in support of his Motion is a Notice of Appeal dated 3rd October 2024. It is also instructive that the intended application for certification is exhibited in the affidavit in support of the instant Motion for extension of time.

4. Notably, none of the respondents replied to the applicant's Motion or filed any written submissions. Neither did they appear at the hearing on 12th March 2026 despite having been duly served with the hearing notice.

5. **Rule 4** of the Court of Appeal Rules gives the Court unfettered discretion to *"... extend the time limited by these Rules, or by any decision of the Court or of a superior Court, for the doing*

of any act authorized or required by these Rules, whether before or after the doing of the act ...,” on such terms as it thinks just.

6. The four basic factors to be considered in exercise of the Court’s discretion in determination of applications under rule 4 were enunciated in **Leo Sila Mutiso vs. Helen Wangari Mwangi**

[1999] 2 EA p231. In determining whether to extend time, the Court takes into account: (i) the length of the delay; (ii) the reason for the delay; (iii) the chances of the appeal succeeding if the application is granted; and (iv) the degree of prejudice to the respondent if the application is granted. In principle, the discretion is unfettered, and there is no limit to the number of factors the court would consider so long as they are relevant.

7. In the same vein, the Court of Appeal in **Fakir Mohammed vs. Joseph Mugambi and two others** [2005] eKLR considered additional factors that may be considered in appropriate cases, namely: the effect of delay on public administration; the importance of compliance with time limits; the resources of the parties; and whether the matter raises issues of public importance, all of which the Court viewed as relevant, but not

exhaustive.

8. The Applicant's Motion for extension of time to file an appeal turns on the four basic factors enunciated in **Leo Sila Mutiso vs. Helen Wangari Mwangi** (supra)

9. With regard to the merit of the appeal, it is sufficient for the applicant to demonstrate that they have an arguable appeal with the likelihood of success. Having considered the numerous grounds of appeal set out on the face of their intended application for certification dated 17th July 2025, I form the view that the applicant has demonstrated that the intended appeal is arguable, and that the intended appeal is not frivolous in that it seeks to challenge: the interpretation and application of the Land Control Act, Cap 302; whether equitable doctrines of constructive trust and proprietary estoppel override the statutory requirements under section 6 of the Land Control Act; and the application of the doctrine of constructive notice in land transactions. Whether or not the intended appeal will succeed in whole or in part is not for me to judge. Furthermore, it is not within my jurisdiction to consider the merits of the intended appeal with finality at this stage in the proceedings.

10. With regard to the period of delay, the Court of Appeal in

Andrew Kiplagat Chemaringo v Paul Kipkorir Kibet [2018]

***eKLR* observed that “... 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 favour. There has to be valid and clear reasons upon which discretion can be favourably exercisable.”**

11. I take to mind the fact that the notice of appeal from the judgment and order dated 20th September 2024 was filed on 3rd October 2024, one (1) day before the period prescribed in rule 36(1) of the Supreme Court Rules; that by a letter dated 23rd September 2024, addressed to M/s Lawrence Obonyo & Company Advocates, the applicant sought from his then counsel, the status of the now impugned decision; that the said letter appears to have elicited no response; that as a result, the applicant appointed M/s Munyoki Maheli & Company Advocates on 10th June 2025; and that it was only then, that the newly appointed firm discovered that the previous counsel had failed

to

take “elementary steps to file the application for certification” despite alleged instructions from the applicant. The delay herein is substantial. However, the applicant has given a plausible and satisfactory explanation for the delay in filing their application.

12. As regards the issue as to whether the extension of time to file the intended appeal will cause undue prejudice to the respondents, The Respondents did not file any replies alluding to any undue prejudice. I find that no such prejudice would be suffered.

13. Having carefully considered the applicant’s Motion, the grounds on which it was founded, the affidavit in support, the oral submissions by learned counsel, the cited authorities and the law, I form the view that the application has merit and is hereby allowed.

14. In view of the foregoing, I hereby order and direct that:

- (i) leave be and is hereby granted to the applicant to file his application for certification and leave to appeal to the Supreme Court out of time;

- (ii) the applicant's Motion be filed within fourteen (14) days from the date hereof; and
- (iii) there be no orders as to costs.

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

DR. K. I. LAIBUTA CARb, FCIArb.

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JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed
DEPUTY REGISTRAR