



**Carla (Suing as the Administrator and Personal Representative of the Estate of Rossi Renata (Deceased)) v Marelli & 2 others (Civil Application E019 of 2022) [2025] KECA 38 (KLR) (24 January 2025) (Ruling)**

Neutral citation: [2025] KECA 38 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT MALINDI  
CIVIL APPLICATION E019 OF 2022  
SG KAIRU, P NYAMWEYA & KI LAIBUTA, JJA  
JANUARY 24, 2025**

**BETWEEN**

**RONCAROLO CARLA ..... APPLICANT  
SUING AS THE ADMINISTRATOR AND PERSONAL REPRESENTATIVE OF  
THE ESTATE OF ROSSI RENATA (DECEASED)**

**AND**

**FABIO MARELLI ..... 1<sup>ST</sup> RESPONDENT  
SONGHAI INVESTMENT LIMITED ..... 2<sup>ND</sup> RESPONDENT  
MOHAMMED ESSAK BACHANI ..... 3<sup>RD</sup> RESPONDENT**

*(Being a reference under rule 55 of the Court of Appeal Rules from the Ruling of this Court (G. V. Odunga, JA) dated 24<sup>th</sup> November, 2023 in an application for extension of time to file and serve an appeal against the Judgment and decree of the Environment and Land Court of Kenya a Malindi (J. O. Olola J.) dated 27<sup>th</sup> May 2020 in Malindi ELC Civil Case No. 61 of 2009)*

**RULING**

1. Roncarolo Carla, who is the legal representative and administrator of the estate of Rossi Renata (deceased), and hereinafter referred to as the applicant, is dissatisfied with the decision delivered on 24<sup>th</sup> November, 2023 by a single Judge of this Court (Odunga, JA.), and has applied for a reference before a full bench of the court under Rule 57(1) (b) of the Court of Appeal Rules. The said ruling was on an application filed by the Applicant and serve a Notice of Appeal and Record of Appeal out of time against the judgment delivered on 27<sup>th</sup> March 2020 by the Environment and Land Court at Malindi (J. O. Olola, J.) in Malindi ELC Civil Case No 61 of 2009.



2. The Honourable single Judge, while noting that there was a two-year delay in applying for extension of time, found that the delay in filing the Notice of Appeal and the Record of Appeal was clearly inordinate; that the delay in regularizing the said filing was inordinate; and that there are no satisfactory reasons advanced for the said delay. The single Judge concluded as follows in the said ruling:

“16. The applicant has not disclosed whose mistake it was that no application was made for extension of time since July, 2020 when she became aware of the judgement. With regard to the responsibility of the litigant to follow up their case, Waki, J.A. had this to say in *Habo Agencies Limited vs. Wilfred Odhiambo Musingo* [2015] eKLR:

“It is not enough for a party in litigation to simply blame the Advocates on record for all manner of transgressions in the conduct of the litigation.

Courts have always emphasized that parties have a responsibility to show interest in and to follow up their cases even when they are represented by counsel.”

17. Having considered all the above, I find that this is not a proper case for this Court to exercise its discretion in favour of the Applicant.”

3. It is now well established that, for a full bench of this Court to interfere with the decision of a single Judge, an applicant must demonstrate that the single Judge failed to take into account a relevant matter which he was obliged to not to have taken into account, applied a wrong principle of law, or misunderstood the evidence or the effect of the evidence on a particular aspect of the matter, and thus reached a wrong conclusion, or, short of any of the foregoing factors, that the decision of the single Judge is plainly wrong, taking into account all the surrounding circumstances of the case.

4. This Court (O’kubasu, Githinji & Nyamu, JJ.A.) while dealing with a reference from the decision of a single judge in *John Koyi Waluke v. Moses Masika Wetangula & 2 others* [2010] eKLR stated thus:

“Having considered all that has been urged before us in this Reference we would say that we have stated time without number that in exercising the unfettered discretion under Rule 4 of this Court’s Rules, a single Judge of the Court is doing so on behalf of the whole Court, and the full bench of the Court would only be entitled to interfere with the exercise of discretion if it be shown that in the process of exercising the discretion, the single Judge has taken into account an irrelevant matter which he ought not to have taken into account, or that he failed to take into account a relevant matter which he ought to have taken into account or that he misapprehended some aspect of the evidence and the law applicable or short of these, that his decision was plainly wrong and could not have been arrived at by a reasonable tribunal properly directing itself to the evidence and the law. It is not enough, for example, to show the full Court that had it been sitting in place of the single Judge, it would have arrived at a different result.”

5. During the hearing of the reference on 1<sup>st</sup> October 2024, Mr. Lumatete Muchai, the learned counsel for the applicant, relied on written submissions dated 30<sup>th</sup> September 2024 and explained that the applicant herein finds herself in this predicament due to her former counsel’s mistakes, inform and advise her of the delivery of the impugned judgement on 27<sup>th</sup> May 2020 and the subsequent negligent missteps by the firm of Katsoleh & Company Advocates in failing to seek leave first before filing of the Notice of Appeal dated 4<sup>th</sup> August 2020. Further, that a mistake or misunderstanding of the applicant’s



legal advisers even though negligent may be accepted as a proper ground for granting relief. Reliance was placed on the decision of this Court in the case of *Tana and Athi River Development Authority vs Jeremiah Kimigho Mwakio & 3 others* (2015) eKLR for this submission. Counsel further submitted that the applicant deserves the leave sought since the reasons advanced for the delay are reasonable and excusable, and that the learned single Judge ought to have been more sympathetic to the applicant's predicament. Lastly, that no prejudice shall be occasioned to the respondents if the application is allowed.

6. Mr. Vincent Omollo, learned counsel for the respondents, also relied on written submissions dated 30th September 2024 to submit that the learned single Judge considered all the relevant facts including the lengthy period of delay and the failure on the part of the applicant to give a satisfactory explanation for the delay, and that the applicant was therefore not deserving of this Court's discretion.
7. The reasons proffered by the applicant for the delay in filing the appeal have been alluded to in the submissions made by Mr. Lumatete. In addition, for extension of time that all the acts done by the firm of M/s. Katsoleh & Company Advocates were invalidated by the trial Court's ruling dated 18<sup>th</sup> August 2020, and that the period of delay, which was two (2) years and four (4) months was occasioned by mistakes and missteps of her previous counsel and should not be visited on her.
8. Counsel for the applicant has pleaded with this Court not to visit the mistakes of the applicant's former advocates upon his client, and that Odunga, JA. ought to have been more sympathetic on this account. It is notable that Odunga, JA., in the ruling dated 24<sup>th</sup> November 2023, considered the settled principles to be applied by the Court when considering an application brought under rule 4 of the Court of Appeal Rules and cited the decisions of this Court (*Waki, J.A*) in *Fakir Mohamed vs. Joseph Mugambi & 2 others* [2005] eKLR and of the Supreme Court in *Nicholas Kiptoo Arap Korir Salat vs IEBC & 7 Others* [2014] eKLR, including the period of delay, the reason for the delay, and the degree of prejudice to the respondent if the application is granted.
9. In addition, the learned Judge considered the reasons given by the applicant for the delay, namely that her erstwhile advocates concealed from her the fact that the judgement had been delivered; that she was unaware of the judgement till July 2020 by which time the period for filing the Notice of Appeal had lapsed; that, when she became aware of the decision, she filed a Notice of Appeal dated 4<sup>th</sup> August 2020 and sought stay of execution; and fact that the Notice of Appeal was invalid having been filed out of time and by advocates who were not properly on record. Specifically, on the submission that the learned Judge was not sympathetic, it was noted as follows in the ruling:

“4 ....

The Court does not act on sympathy and as was held by the Supreme Court in *Daniel Kimani Njihia v Francis Mwangi & Another* [2015] eKLR:

‘Even as the Court seeks to do justice, it cannot be lost to it that despite having a conscience, it is a court of law and not mercy. It is also bound by the law and more so *the Constitution* which binds all.’

5. We appreciate that we are sworn to do justice but justice must be administered in accordance with the law. See *Mehrunnissa v Mohamed Parvez* [1976-1985] EA 289; [1981] KLR 547.”
10. In *Tana and Athi Rivers Development Authority vs Jeremiah Kimigho Mwakio & 3 Others* [supra], this Court also noted that there is a corollary to the hallowed maxim that mistakes of counsel should not be visited on a client, which is that legal business must be conducted efficiently. In addition, there should be sufficient demonstration that non-compliance with any prerequisites provided for in the



applicable rules was due to the advocate's fault. In the present application however, we agree with the concern raised by Odunga J.A as regards the inaction on the part of the applicant to regularise her position once she knew that she was out of time in July 2020, and only filed an application for extension of time over two years later. The delay to apply for extension of time to file a Notice of Appeal cannot therefore be wholly attributable to the applicant's advocates, and to this effect.

11. In the circumstances, it is our view that there was inordinate delay that was not sufficiently explained by the applicant. We are satisfied that the learned single Judge exercised his discretion judiciously, and this Court cannot therefore interfere with his determination. Accordingly, this reference lacks merit and is hereby dismissed with costs to the respondents.
12. Orders accordingly.

**DATED AND DELIVERED AT NAIROBI THIS 24<sup>TH</sup> DAY OF JANUARY, 2025**

**S. GATEMBU KAIRU, FCIArb**

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**JUDGE OF APPEAL**

**P. NYAMWEYA**

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**JUDGE OF APPEAL**

**Dr. K. I. LAIBUTA CArb, FCIArb.**

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**JUDGE OF APPEAL**

I certify that this is the true copy of the original  
signed

**DEPUTY REGISTRAR**

