



**Muchene v Kariuki & 2 others (Civil Application E600 of 2024)  
[2025] KECA 393 (KLR) (28 February 2025) (Ruling)**

Neutral citation: [2025] KECA 393 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAIROBI  
CIVIL APPLICATION E600 OF 2024  
AO MUCHELULE, JA  
FEBRUARY 28, 2025**

**BETWEEN**

**PATRICK KABUE MUCHENE ..... APPLICANT**

**AND**

**SAMUEL MWAURA FELIX KARIUKI ..... 1<sup>ST</sup> RESPONDENT**

**HANNAH WANGARI KINUTHIA ..... 2<sup>ND</sup> RESPONDENT**

**MICHAEL MUHIA NGAE ..... 3<sup>RD</sup> RESPONDENT**

*(An application for the extension of time to appeal out of time against the judgment and decree of the Environment and Land Court of Kenya at Nairobi (M.D. Mwangi, J.) dated 11th April 2024 in ELC No. 788 of 2015)*

**RULING**

1. The originating summons by the applicant, Patrick Kabue Muchene, was on 11<sup>th</sup> April 2024 dismissed by the Environment and Land Court at Nairobi on the basis that adverse possession had not been established against the respondents, Hannah Wangari Kinuthia, Samwel Mwaura Felix Kariuki and Michael Muhia Ngae. It was held that the applicant had failed to prove possession of the specific portions claimed for the stationary period, and that the surveyor's evidence had failed to establish where exactly the applicant allegedly occupied. The respondents' counterclaim to have the applicant evicted from the suit lands, LR Nos. 164/72 and 164/73 was allowed with costs.
2. The applicant was aggrieved and timeously filed a notice of appeal dated 23<sup>rd</sup> April 2024 which he served on 30<sup>th</sup> April 2024. The present application dated 11<sup>th</sup> November 2024 seeks leave to extend time to file the memorandum and record of appeal. It is an application under Rule 4 of the Court of Appeal Rules, 2022 and sections 3A and 3B of the *Appellate Jurisdiction Act*.



3. The applicant explains that his then advocates wrote to the superior court seeking a copy of proceedings and judgment. This was done on the same day he filed the notice of appeal. On 24<sup>th</sup> April 2024 the advocates were informed that the proceedings and judgment were ready for collection. Before then, on 9<sup>th</sup> July 2024, the applicant had instructed Ms. J.K. Kibicho & Co. Advocates to come on record for him for the purpose of appeal. It was not until 25<sup>th</sup> October 2024 that the new advocates came on record through a consent recorded by the advocates. The new advocates then filed the instant application on 11<sup>th</sup> November 2024. The applicant blames his old advocates for not filing the memorandum and record of appeal after they were notified that the proceedings and judgment were ready. He states that it was for this reason that he instructed his new advocates. He swore that he has an arguable intended appeal. He blames the trial court for finding that he was on the parcels by leave and consent when it was clear that the sale agreement by which he came on the portions had become null and void for lack of the consent of the Land Control Board; and, secondly, that he was on the suit parcels since 1999, for a period of over 12 years, and blames the trial court for finding otherwise.
4. The respondents opposed the application through the replying affidavit by the 1<sup>st</sup> respondent. Their case is that, now that the proceedings and judgment were ready for collection on 24<sup>th</sup> July 2024, it took 3 months and 2 weeks before bringing the application; that that was a long and unexplained delay. They state that, as early as 9<sup>th</sup> July 2024 the applicant's new advocates wrote to the respondents' advocates to state that they were coming on record for the applicant and wonder why it took this long for the application to be filed. Lastly, they contend that the intended appeal does not raise arguable grounds.
5. This Court has discretionary power under Rule 4 of the Rules to extend time for appealing. In exercising this discretion, the Court will consider the length of delay; the reasons for the delay; the possible chances of the appeal succeeding, if the application is granted; and the degree of prejudice that the respondent may suffer, if the application is allowed. (See *Leo Sila Mutiso -vs- Hellen Wangari Mwangi* [1999]2 E.A. 231).
6. The applicant's counsel has conceded in his submissions that, now that the proceedings and judgment were ready for collection on 24<sup>th</sup> July 2024, he had under Rule 84(1) of the Rules 60 days to file the memorandum and record of appeal; that he was, consequently late by 63 days. Any period of delay has to be explained, but learned counsel submitted that the delay was not inordinate as to disentitle the applicant of extension of time.
7. In the submission by learned counsel for the respondents, it took one month and two weeks for the applicant to bring the application, after the period of filing the memorandum and record of appeal had lapsed following the information that proceedings and judgment were ready for collection, that the delay was a long one and unexplained. Further, that the failure by the new advocates to do what was required of them was not excusable.
8. When the new advocates came into the matter, it was known by them and the applicant that the filing of the appeal was due and that time was ticking. Not to explain why it took over one month to bring the application would not help the applicant in this application. In the circumstances, the delay was inordinate.
9. This should be enough to find that the application is not merited. It is dismissed with costs.

**DATED AND DELIVERED AT NAIROBI THIS 28<sup>TH</sup> DAY OF FEBRUARY, 2025.**

**A.O. MUCHELULE**

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**JUDGE OF APPEAL**

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

Signed

**DEPUTY REGISTRAR.**

