



Mwaniki v Mbuya & another (Suing as the Representatives of the Estate of Edward Gitonga Njeru - Deceased) (Civil Application E004 of 2025) [2025] KECA 396 (KLR) (28 February 2025) (Ruling)

Neutral citation: [2025] KECA 396 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NYERI
CIVIL APPLICATION E004 OF 2025
S OLE KANTAI, JA
FEBRUARY 28, 2025**

BETWEEN

GENANCO NYAGA MWANIKI APPLICANT

AND

VIRGINIA MBUYA 1ST RESPONDENT

NJERU NJERU NJOKA 2ND RESPONDENT

SUING AS THE REPRESENTATIVES OF THE ESTATE OF EDWARD GITONGA NJERU - DECEASED

(An application for extension of time to file and serve the Notice of Appeal and Record of Appeal out of time from the Judgment of the High Court at Embu (L. Njuguna, J.) delivered on 16th October, 2024 in HC Civil Appeal NO. E023 of 2024)

RULING

1. The only prayer that I can entertain in the Motion brought by the applicant Genando Nyaga Mwaniki under various provisions of law is prayers 6 and 7:
 6. That the applicant be granted leave by this Honourable Court to file and serve his Notice of Appeal out of time against the decision of the High Court of Kenya at Embu in Embu High Court Civil Appeal No. E023 of 2024
 7. That the period in which to appeal be extended for a further period of 60 days if leave to appeal out of time is granted.”
2. There is also a prayer for costs.



3. In grounds in support of the Motion and in a supporting affidavit of Ngola Peter Makau who says that “...I am the Legal Officer of the Applicant...” it is stated as far as the application is for a single Judge that the applicant has an arguable appeal; that delay in filing Notice of Appeal is excusable and the application has been brought without undue delay; that the respondents will not suffer any prejudice or any damage that cannot be compensated by way of costs.
4. In a brief history of the case it is stated that the respondents (Virginia Mbuya Njeru and Njeru Njoka (Suing as the representatives of Edward Gitonga Njeru – Deceased) were the plaintiffs in Siakago MCCC E105 of 2021 where the lower court delivered judgment in their favour for Kshs.1,925,000 plus costs of the suit; the applicant appealed that judgment in Embu HCCA E023 of 2024 which was dismissed; that period for lodging an appeal has lapsed, that:

... the delay to file the appeal was occasioned by delay in obtaining a copy of judgment, and a subsequent delay in issuing instructions to appeal.

...”
5. Attached to the Motion is judgment of the subordinate court which was delivered on 30th November, 2023 and that of the High Court of Kenya at Embu which was delivered on 16th October, 2024.
6. I have not seen any replying affidavit from the respondents. I note that parties were served with an Amended Hearing Notice on 12th February, 2025 at 12.00 p.m. at litigation@kibatiaadvocates.com and Khan Embukhanembu@gmail.com.
7. I have also seen an Affidavit of Service by a Court Process Server showing that he served court documents on Khan & Associates Advocates on record for the respondents.
8. I have seen and considered written submissions.
9. The principles that apply in an application of this nature are well known and were set out in the oft cited case of Leo Sila Mutiso vs. Rose Hellen Wangari Mwangi [1999] 2 EA 231 as follows:

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.”
10. I note that the Motion is dated 15th January, 2025. The applicant has not sufficiently explained why it took 3 months from 16th October, 2024 when judgment was delivered by the High Court for relevant steps to be taken to appeal that decision. I am not told what steps were taken to get a copy of the judgment; I have not been shown any letter bespeaking proceedings; I have not been told when a copy of the judgment of the High Court was obtained. There is no reason given for length of delay to take steps to appeal; the reasons for delay is not convincing if the applicant was actually serious that it desired to appeal. I do not know whether the intended appeal has chances of success. I note that judgment of the subordinate court was delivered on 30th November, 2023 and the respondents may very well be prejudiced if the matter is lengthened any further by an applicant who I have found to have been indolent, not vigilant in the matter.
11. I am not prepared to exercise my discretion in favour of the applicant. I dismiss the Motion in so far that it prays for enlargement or extension of time. I make no order on costs.



DATED AND DELIVERED AT NYERI THIS 28TH DAY OF FEBRUARY, 2025.

S. ole KANTAI

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JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

