



REPUBLIC OF KENYA



**KENYA LAW**  
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**Kenya Power and Lighting Company v Muigai (Civil Application  
E360 of 2024) [2025] KECA 278 (KLR) (21 February 2025) (Ruling)**

Neutral citation: [2025] KECA 278 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAIROBI  
CIVIL APPLICATION E360 OF 2024  
LA ACHODE, JA  
FEBRUARY 21, 2025  
[IN CHAMBERS]**

**BETWEEN**

**KENYA POWER AND LIGHTING COMPANY ..... APPLICANT**

**AND**

**SAMSON GITAU MUIGAI ..... RESPONDENT**

*(An application for extension of time in which to file an appeal  
against a ruling delivered in the Environment and Land Court at  
Nairobi by Komingoi J on 25th April 2024 in ELC No. E039 of 2022)*

**RULING**

1. Kenya Power and Lighting Company (the Applicant), has filed the Notice of Motion dated 11<sup>th</sup> July 2024 expressed to be brought pursuant to Section 3, 3A 3B [Appellate Jurisdiction Act](#), rule 3, 4 and 5(2) (b) of the [Court of Appeal Rules](#) 2022 and Article 159 (d) of the [Constitution](#). They seek leave to appeal out of time against the ruling dated 25th April 2024, delivered by Komingoi J in ELC no. E039 of 2022: [Samson Gitau Muigai v Kenya Power and Lighting Company](#), and consequentially, file the memorandum and record of appeal out of time and the costs of the application be bound by the outcome of the intended appeal. The Respondent is Samson Gitau Muigai.
2. The grounds of the application as stated on the face thereof are that, aggrieved by the ruling of the court the Applicant filed a Notice of Appeal in this Court on 3<sup>rd</sup> May 2024. Subsequently on 16<sup>th</sup> May 2024 they applied for certified copies of proceedings. They could not file the record of appeal within the period of 60 days prescribed in the rules, as the certified copies of proceedings and judgement were not ready for collection despite being requested for.
3. The application is supported by the Replying Affidavit of even date sworn by Joseph Muchai the Applicant's advocate, reiterating the grounds of the application. In addition the deponent avers that



- the intended appeal has serious impact on the proceedings in the trial court, where the Applicant's Preliminary Objection was dismissed. It is averred that the Preliminary Objection was on the question of jurisdiction and is therefore, a primordial issue which goes to the heart of the case. That there is a risk of the case in the trial court proceeding without that issue being determined by the Court of Appeal.
4. The intended appeal is said to be arguable with chances of success and there is no prejudice to be suffered by the Respondent if this application is allowed.
  5. The Respondent swore and filed a Replying Affidavit dated 26<sup>th</sup> July 2024 and deposed that this application came 90 days after the impugned ruling and there is no evidence that the Applicant requested for the proceedings in time. That the Respondent will be prejudiced as the trial will be delayed and he will continue to lose the use of his property. Further that extension of time is not a right and is only available to deserving cases. It is averred that the argument that the intended appeal has high chances of success is refuted.
  6. This application was disposed of by way of written submissions. M/s Maanzo Advocate filed submissions dated 30<sup>th</sup> September 2024 on behalf of applicant, while the firm of M/s Julia Kariuki Co Advocate filed those dated 23<sup>rd</sup> January, 2025 on behalf of the respondent.
  7. Mr. Maanzo learned counsel, reiterated the content of the Applicant's supporting affidavit and urged the Court to be guided by the decision in [\*Kenya Counsel of Employment & Migration Agencies v National Police Service Commission and 8 Others\*](#) (Civil Application 35 of 2019) 2021 KECA 360 KLR on the matters to be taken into account in deciding an application of this nature. He also referred to the dictum in [\*Hassan Nyanje Charo v Khatib Mwashetani and 3 Others\*](#) SC Application no. 15 of 2014 (2014) eKLR where the Court discouraged the turning away of an applicant who has, prima facie exercised all due diligence in pursuit of their case and, the case of [\*Njoroge v Kimani\*](#) (Civil Application Nai E049 Of 2022 [2022] KECA 1188 KLR, in which the Court ruled that failure to get certified copies of proceedings cannot be tied to the Applicant who has no control over the administrative process of the Court.
  8. Ms Kariuki learned counsel submitted for the Respondent that on the question of delay, it is not in dispute that the ruling, the subject of the intended appeal was delivered on 25<sup>th</sup> April 2024 and this application was filed 3 months later on 11<sup>th</sup> July 2024. She cited the case of [\*Jaber Mohsen Ali and Anor v Priscilla Boit and Anor\*](#) ELC No. 200 of 2012 [2014] eKLR where the Court held that unreasonable delay is dependent on the circumstances of each case, and even one day's delay could be unreasonable depending on the judgement, or ruling, or order given in a case.
  9. Counsel contended that there is no evidence to show that the Applicant followed up on proceedings after requesting for them. She placed reliance on the case of [\*Andrew Chemiringo v Paul Korir Kibet\*](#) [2018] eKLR where the Court stated that a plausible and satisfactory explanation for delay is the key to unlocking the court's flow of discretionary favour. She urged that the application has not satisfied the conditions for granting leave to file an appeal out of time and is not worthy of the orders sought.
  10. I have considered the application, the affidavits in support and in reply and the submissions from both parties. Rule 4 of this [\*Court's Rules\*](#) which grants the Court the mandate to exercise the discretion to extend time otherwise limited by these rules, or decision of this Court, or Superior Court is unfettered. It provides as follows:

“The Court may, on such terms as it thinks just, by order 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, and a



reference in these Rules to any such time shall be construed as a reference to that time as extended.”

11. The principles that guide this Court in the exercise of its mandate under rule 4 have been crystallized by case law. In this decision of *Leo Sila Mutiso v Rose Hellen Wangari Mwangi* Nairobi CA No. 255 of 1997 the Court stated that:

“It is now well settled that the decision whether or not to extend the time for appealing is essentially discretionary. It is also well settled 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.”

12. The Notice of Appeal was filed in this Court on 3<sup>rd</sup> May 2024 and the application before me is dated 11<sup>th</sup> July 2024, about a week beyond the sixty days timeline. The reason for the delay is that the registry took longer than expected to supply the record. I find that the delay is not inordinate and there is no evidence of any prejudice to be suffered by the Respondent if the application is granted.
13. On the issue as to the possible chances of the appeal succeeding if the application is granted, it is noted that the Preliminary Objection that is the subject of the intended appeal is on jurisdiction and is primordial to the core of the case. I will say no more on this issue lest I embarrass the bench that may be seized of the appeal.

In light of the foregoing analysis, I am satisfied that the application dated 11<sup>th</sup> July, 2024 has merit and is therefore, allowed with the following orders:

- i. The Applicant shall file the memorandum and record of appeal within 14 days of this ruling being delivered.
- ii. The costs of this application will be borne by the Applicant.

It is so ordered.

**DATED AND DELIVERED AT NAIROBI THIS 21<sup>ST</sup> DAY OF FEBRUARY, 2025.**

**L. ACHODE**

**JUDGE OF APPEAL**

I certify that this is a true copy of the original

*signed*

**DEPUTY REGISTRAR**

