



**Suereca East Africa Limited v Baburam & 3 others (Suing as Legal Representatives of the Estate of Rael Chemeli Baburam) (Civil Application E182 of 2024) [2025] KECA 329 (KLR) (21 February 2025) (Ruling)**

Neutral citation: [2025] KECA 329 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT KISUMU  
CIVIL APPLICATION E182 OF 2024  
LA ACHODE, JA  
FEBRUARY 21, 2025**

**BETWEEN**

**SUERECA EAST AFRICA LIMITED ..... APPLICANT**

**AND**

**JACKSON SAGLIRAM BABURAM ..... 1<sup>ST</sup> RESPONDENT**

**SIRIRAM BABURAM ..... 2<sup>ND</sup> RESPONDENT**

**DAVID JAGATRAM BABURAM ..... 3<sup>RD</sup> RESPONDENT**

**CAROLSATYA STADELL ..... 4<sup>TH</sup> RESPONDENT**

**SUING AS LEGAL REPRESENTATIVES OF THE ESTATE OF RAEL CHEMELI  
BABURAM**

*(Being an application to file Notice of Appeal out of time against the ruling of the ELC Court at Kisumu (Okongo J) dated 11th March, 2024 in Kisumu ELC Case No. 2 of 2019)*

**RULING**

1. The applicant Suereca East Africa Limited has filed a Notice of Motion dated 6<sup>th</sup> December 2024, expressed to be brought pursuant to section 7 of the [Appellate Jurisdiction Act](#) (Cap 9 Laws Kenya) and rule 4 of the Court of Appeal Rules 2010. It is seeking an extension of time to file the Notice of Appeal in respect of the ruling in Kisumu ELC No. 2 of 2019 delivered on 11<sup>th</sup> March, 2024, and that the time within which to file the intended Appeal be defined and the cost of the application be in the intended appeal.
2. The grounds of the appeal as stated on the face thereof are that the time for filing the appeal has lapsed yet the applicant which is greatly aggrieved by the ruling wishes to appeal. It avers that the appeal is arguable with high chances of success: that substantial loss will result to the applicant unless the orders



sought are granted: that the respondent has already taxed the bill of costs and there is eminent threat of execution which will render the appeal nugatory.

3. Mr. Christophe Lacarin, the General Manager of the applicant, swore a supporting affidavit dated 6<sup>th</sup> December, 2024 on behalf of the applicant. He deposed that the delay is not inordinate and that the applicant will suffer irreparable loss if leave is not granted. He also averred that the appeal has high chances of success for reasons that the learned Judge did not consider the applicant's submissions and affidavits, although they were on the record. That the court dismissed the application offhand on a technicality, without considering its substance.
4. The deponent averred further that the court made an order for the introduction of further evidence in the form of valuation by the Government, to ascertain the compensation and this will result in the enhancement of the pecuniary amount to be paid out. He deposed that the decision of the court was embodied in an order as opposed to a decree, signifying the inconclusive nature of the judgment. Further that the respondent will not suffer any prejudice as it is in the interest of all the parties that justice be done.
5. Messrs Ombati Otieno, Opondo & Awino Advocates filed submissions dated 5<sup>th</sup> February 2025, for the appellant, setting out the principles that guide this Court in deciding an application for extension of time. He relied on the case of Leo Sila Mutiso vs Rose Wangari Mwangi [\*CA No. 255 of 1997\*](#) and Julius Kamau Kithaka vs Waruguru Kithaka Nyaga & 2 others, [\*CA No. 14 of 2013\*](#), to urge that the discretion of a judge under rule 4 of the Court of Appeal Rules is wide and unfettered, but it must be exercised judicially, upon reason and not arbitrarily, capriciously, on whim or sentiment. That before 1985, rule 4 required an applicant to show "sufficient reason" why discretion to extend time should be exercised in his favour. By an amendment in 1985 the "sufficient reason" stricture was removed and the court was allowed to extend time on such terms as it thought fit.
6. Counsel averred that the delay in filing the Notice of Appeal within time was due to an oversight on the part of the Applicant's advocates. That by the time the advocates applied for certified copies of the proceedings and ruling of the court, the time for filing the Notice of Appeal had already lapsed and the applicant is therefore in Court in an effort to appeal the dismissal of the application for setting aside,
7. Counsel further stated that the applicant stands to suffer the most prejudice as it was not heard in the superior Court and its application for setting aside was later dismissed for having filed submissions late. He cited the case of Shabbir Ali Joscab ~vs- Amaar Osman & Another Civil Application No. 1 of 2023, where the court disregarded procedural technicalities in favour of substantive justice and dismissed the preliminary objection raised where a Notice of Appeal was filed and served late.
8. Counsel submitted that the applicant has a good and arguable case with overwhelming chances of success as set out in the supporting affidavit. He contended that the superior court left room for re-opening of the case to allow a government valuer to present evidence, and a hearing of the case inter-partes would not have caused any prejudice to the respondents. Therefore, he is asking the Court to allow the application and define the time span within which to file a record of appeal.
9. There is no replying affidavit or submission filed by the respondents in compliance with the directions of the Deputy Registrar issued on 4<sup>th</sup> February 2025. The application is therefore unopposed.



10. The Court’s mandate to exercise the discretion to extend time otherwise limited by these rules, or decision of this Court, or Superior Court is unfettered. It is donated by Rule 4 of this Court’s Rules which 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 the discretion donated under rule 4 are set out in Nicholas Kiptoo Arap Korir Salat vs IEBC & 7 others, Supreme Court of Kenya Application No. 16 of 2014, as follows:

1. Extension of time is not a right of a party. It is an equitable remedy that is only available to a deserving party at the discretion of the Court;
2. A party who seeks an extension of time has the burden of laying a basis to the satisfaction of the court’
3. Whether the court should exercise the discretion to extend time, is a consideration to be made on a case-to-case basis;
4. Whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the Court’
5. Whether there will be any prejudice suffered by the respondents if the extension is granted;
6. Whether the application has been brought without undue delay; and
7. Whether in certain cases, like election petition, public interest should be a consideration for extending time.”

12. I have considered the application in light of the foregoing principles. As stated in Nicholas Salat (supra), extension of time is not a right of a party. It is an equitable remedy that is only available to a deserving party at the discretion of the Court. The Court discourages the turning away of an applicant who has, prima facie, exercised all due diligence in pursuit of their case. The party who seeks an extension of time has the burden of laying a basis to the satisfaction of the Court and the Court exercises the discretion to extend time, on a case-to-case basis.

13. Whether there is a reasonable reason for the delay it should be explained to the satisfaction of the Court. The question therefore is whether the applicant has tendered a satisfactory explanation for the delay in filing this application. The delay herein encompasses the period from 11<sup>th</sup> March, 2024 when the ruling was delivered, to 6<sup>th</sup> December 2024 the date of this application. This amounts to a delay of more than 8 months.

14. The delay in filing the Notice of Appeal within time is attributed to an oversight on the part of the Applicant’s advocates. On mistakes said to arise from the applicant’s advocate the Court of Appeal in the case of Rajesh Rughani v Fifty Investments Limited & Another (2016) eKLR pronounced itself thus:

“In Habo Agencies Limited vs Wilfred Odhiambo Musingo [2015] Eklr, this Court stated that it is not enough for a party in litigation to simply blame the advocate on record for all



manner of transgressions in the conduct of litigation. Courts have always emphasized that the parties have a responsibility to show interest in and to follow up their cases even when they are represented by counsel.

‘In *Mwangi vs Kariuki* (199) LLR 2632 (CAK) Shah JA ruled that mere inaction by counsel should only support a refusal to exercise discretion if coupled with a litigant’s careless attitude.’”

There is no evidence herein that the applicant followed up its case with its counsel or the registry. Mere allegation of counsel’s indolence is not enough to warrant grant of extension of time.

15. On whether the intended appeal is arguable with the possibility of success, it was contended that the learned Judge did not consider the applicant’s submissions and affidavits, although they were on the record. That the court dismissed the application offhand on a technicality, without considering its substance. It is not my duty to delve into the merits and demerits of the intended appeal. It is however, my view that it is arguable.
16. Notwithstanding that the intended appeal is arguable and the application was not opposed, the delay of more than 8 months is found to be inordinate in the circumstances of this case, and the reason attributable for the delay is not reasonable. Consequently, I find that the applicant is not deserving of the Court’s discretion to extend time for filing of its application.
17. Reasons wherefore, the application dated 5<sup>th</sup> February, 2025 is found to lack merit and is dismissed with no orders as to costs, since the respondent did not respond to the application or file submissions.

It is so ordered.

**DATED AND DELIVERED AT KISUMU THIS 21ST DAY OF FEBRUARY 2025.**

**L. ACHODE**

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**JUDGE OF APPEAL**

I certify that this is a true copy of the original

Signed

**DEPUTY REGISTRAR**

