



REPUBLIC OF KENYA



**Njeru v Muriuki & 3 others (Civil Application E005 of 2024)
[2025] KECA 351 (KLR) (18 February 2025) (Ruling)**

Neutral citation: [2025] KECA 351 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NYERI
CIVIL APPLICATION E005 OF 2024
A ALI-ARONI, JA
FEBRUARY 18, 2025**

BETWEEN

ANN WANGU NJERU APPLICANT

AND

JOHN MURAGE MURIUKI 1ST RESPONDENT

CHARLES BACHA NJOROGE 2ND RESPONDENT

SIMON KINYUA THEURI 3RD RESPONDENT

PETER NDUNGU WANG'OMBE 4TH RESPONDENT

(An application for leave to file and serve a notice of appeal and record of appeal out of time from the Ruling of the Environment and Land Court at Nanyuki (Bor, J.) dated 20th August 2024) in ELC No. E003 of 2021)

RULING

1. Before the court is a notice of motion dated 19th December 2024 brought under Article 48, 50(1) and 159 of the Constitution of Kenya, Sections 1A, 1B, 3A and 98 of the Civil Procedure Act, Rules 4 and 77 of the Court of Appeal Rules 2022, seeking enlargement of time within which to file the notice of appeal, memorandum of appeal and record of appeal and the draft notice of appeal be deemed as properly filed.
2. The application is based on the following grounds: the learned judge delivered a ruling in Nanyuki ELC No. 3 of 2021 (formerly Nyeri ELC No. 258 of 2013) on 20th August 2024; the applicant being aggrieved was required to file the notice of appeal within 14 days from the date of the ruling, which meant the deadline was 3rd September 2024; that the applicant's previous counsel failed to inform the applicant of the delivery of the ruling, leading to the delay in filing and serving the notice of appeal; which delay is not inordinate.



3. The application is further supported by the affidavit of the applicant sworn on 19th December 2024, in which she deposes that she is desirous of pursuing an appeal against the contested ruling; that when she visited the court to inquire about the matter, she learnt that the ruling had already been delivered; in an attempt to reach her counsel then on record, she learnt that the counsel was unqualified to practice law; she also learnt that the deadline for filing a notice of appeal had passed.
4. The applicant further deposes that she is an elderly woman unfamiliar with court processes and e-filing procedures and could not address her situation sooner; she has limited financial means, and the mistake of her former counsel should not be held against her; should the application be denied, she would be unjustly penalized, and it is in the interest of justice that the prayers be granted.
5. The learned counsel now on record for the applicant has filed submissions and a list of authorities dated 14th February 2025. In support of the application, learned counsel relies on the case of Imperial Bank Ltd (in receivership) & Another vs. Alnasir Popat & 18 Others [2018] eKLR, where the court outlined the key factors for granting an extension of time. These include the length and reasons for the delay, potential prejudice to parties, their conduct, balancing the right to appeal with the need for timely dispute resolution, public interest considerations, and the prima facie merits of the intended appeal.
6. Further, learned counsel rehashes the applicant's reasons for the delay contained in the affidavit. I need not repeat them. He further submits that the period between the delivery of the ruling and the application is three months. Learned counsel contents that cancellation of title arising from the ruling will invalidate the applicant's title deed, which would render the applicant destitute as the purchasers of the 1st respondent's share of the land would gain priority over her despite her status as a beneficial owner of the property inherited from her deceased father; she has occupied this land for over 13 years, during which time she has developed it and buried her daughter there; the ruling will cause her significant hardship, as it would displace her and force her to exhume her daughter's remains.
7. None of the respondents opposed the application by filing replying affidavits or submissions.
8. I have considered the application, the affidavit in support and the submissions. The issue for determination is whether the applicant deserves the orders sought. Rule 4 of the Court of Appeal Rules governs the extension of time. The rule allows this Court to exercise discretion to extend the time limited by the rules for doing any act authorized or required by the Rules. This Court in the case of Leo Sila Mutiso vs. Helen Wangari Mwangi [1999] 2 EA, set out the principles to be applied in the exercise of its discretion in determining any application under Rule 4. The court held that; -

“ the decision whether or not to extend time is discretionary. The Court in deciding whether to grant an extension of time takes into account the following matters: first, the length of the delay; second, 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.”
9. The applicant's delay in filing the appeal is three months. She has explained the reasons for the delay and her desire to pursue the appeal. I find the reasons given plausible, and in the circumstances of this case, the delay is not inordinate. On the face of it, the appeal seems arguable. The respondents did not make the court aware of any likely prejudice to be suffered.
10. In the circumstances, I am inclined to allow the application not to shut the applicant from the seat of justice.

DATED AND DELIVERED AT NYERI THIS 18TH DAY OF FEBRUARY, 2025.



ALI-ARONI

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JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR

