



Maina & 21 others (Suing on Behalf of the Estate of Peter Maina Waigwa (Deceased)) v Kimemia Engineer Constuction Company Limited & 3 others (Civil Application E578 of 2024) [2025] KECA 145 (KLR) (7 February 2025) (Ruling)

Neutral citation: [2025] KECA 145 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPLICATION E578 OF 2024
LA ACHODE, JA
FEBRUARY 7, 2025**

BETWEEN

**LUCY NJERI MAINA & 21 OTHERS APPLICANT
SUING ON BEHALF OF THE ESTATE OF PETER MAINA WAIGWA
(DECEASED)**

AND

**KIMEMIA ENGINEER CONSTUCTION COMPANY LIMITED 1ST
RESPONDENT
COUNTY GOVERNMENT OF NAIROBI 2ND RESPONDENT
CHIEF LAND REGISTRAR 3RD RESPONDENT
THE HON ATTORNEY GENERAL 4TH RESPONDENT**

(Being an application for extension of time to lodge an appeal out of time in an intended appeal from the judgment and Decree of the Environment and Land Court at Nairobi in ELC Case No. 439 of 2021)

RULING

1. The applicants filed a Notice of Motion dated 4th November 2024 under Sections 3, 3A & 3B of the [Appellate Jurisdiction Act](#), Rules 31, 41, 42(1) 43(1) & 47 (1) & (2) of the Court of Appeal Rules, 2010, Order 50 Rule 6 of the Civil Procedure Rules 2010, sections 27 & 28 of Limitations of Action Act, and sections 1A, 1B, & 3A of [Civil Procedure Act](#) for orders that:
 - i. This Court be pleased to extend the time within which the applicants/intended appellants ought to have filed their appeal against the judgment of the Environment and Land Court.



- ii. This Court be pleased to grant leave to the applicants/ intended appellants to file their appeal against the judgment of the Environment and Land Court out of time.
2. The application is based on the grounds on the face of it, and the supporting affidavit sworn by Lucy Njeri Maina on 4th November 2024 on her own behalf and on behalf of all the other applicants.
3. It was deposed that after the impugned judgment dated 4th April 2024 was delivered, the applicants instructed their former advocates, M/s Gachie Mwanza & Co Advocates to apply for stay of execution and file an appeal immediately. The advocates requested for certified proceedings and judgment from the court vide a letter dated 8th April 2024 and filed a Notice of Appeal on the same date. It was further deposed that there was a delay by the court below in the issuance of the copies of the proceedings and judgment until recently.
4. The 1st applicant deposed that they are likely to suffer irreparable damages if orders sought are not granted as the eviction of the applicants is eminent. That the applicants have an arguable appeal as demonstrated in the Memorandum of Appeal. It was deposed that the applicants have lived in land parcel LR No 209/4844-Nairobi since the year 1965. The delay in getting the certified copies of proceedings and judgment has been proven by the issuance of the certificate of delay dated 26th August 2024, and the delay therein is not inordinate in the circumstances. Thus, they seek for extension of time.
5. In opposition, the 1st respondent swore a replying affidavit on 12th November 2024. He deposed that the typed proceedings were ready for collection on 5th August 2024 and the applicants had sixty days from 5th August 2024 to institute an appeal. Thus, the last day to institute such an appeal was 5th October 2024.
6. It was deposed that the applicants have not explained why they were unable to file the appeal within the timelines after receipt of the typed proceedings. As such, his averment is that the applicants have not persuaded this Court why it should exercise its discretion in their favour.
7. This application was disposed of by way of written submissions dated 15th November 2024 filed on behalf of the applicants by the firm of M/s S. J. Nyang & Company Advocates and those dated 27th November 2024 on behalf of 1st respondent by the firm of M/s Kibatia & Company Advocates LLP.
8. The applicants reiterated the content of their affidavit and added that it took quite a while for the previous advocate on record to hand over his entire file to the new advocate to enable her to appraise herself with the matter.
9. In rebuttal, the 1st respondent also reiterated his replying affidavit. In addition, it is urged that granting such an order would cause severe detriment to the 1st respondent who has acted in reliance of the judgment, making significant preparations and executing it in accordance with the law. That allowing the application will expose the 1st respondent to unnecessary financial and logistical burdens, undermining his legitimate expectation of finality.
10. I have considered the application, supporting affidavit, replying affidavit and the rival submissions before me. Rule 4 of this Court's Rules gives the Court the unfettered discretion to extend time otherwise limited by these Rules or decision of this Court or Superior Court. The said rule stipulates thus:

“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 the mentioned rule have been crystallized by case law. In the decision of *Leo Sila Mutiso vs Rose Hellen Wangari Mwangi Nairobi CA No. 255 of 1997* this 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 impugned judgment was delivered on 4th April 2024, and the Notice of Appeal filed on 8th April 2024. Rule 84 of this Courts Rules provides that an appeal shall be instituted by lodging in the appropriate registry, within sixty days after the date when the notice of appeal was lodged.

13. The application before me was brought vide a Motion dated 4th November 2024. Annexed to the 1st applicant’s supporting affidavit is the Certificate of Delay dated 26th August 2024 which indicates that the court notified the applicant’s advocates that certified copies of proceedings were ready for collection. The applicants took twenty-six working days before filing this application upon receiving Certificate of Delay. They posited that: “it took quite a while for the previous advocate to hand over his entire file to the new advocate to enable her to appraise herself with the matter”. However, it is not indicated when the current advocate was given the complete file by the former advocates. I note that the Consent on Change of the applicant’s Advocates dated 30th April 2024 was filed in court on 24th July 2024.

14. I am guided by this Court’s decision in *Andrew Kiplagat Chemaringo vs Paul Kipkorir Kibet (2018) eKLR* where it was held that:

“The law does not set out any minimum or maximum period of delay. All it states is that any delay should be satisfactorily explained. A plausible and satisfactory explanation for delay is the key that unlocks the court’s flow of discretionary favour. There has to be valid and clear reasons, upon which discretion can be favourably exercisable.”

15. I also call to mind the holding in *Imperial Bank Ltd (in receivership) and Another v Alnasir Popat and 18 Others (2018) eKLR*, where this Court had the following to say concerning possibility of the appeal to succeed:

“In taking into account the last consideration, it must be born in mind that it is not really the role of the single judge to determine definitively the merits of the intended appeal. That is for the full court if and when it is ultimately presented with the appeal.”

16. I find that the reason given for not filing the appeal after the certificate of delay was given is not plausible and the delay is therefore, found to be inexcusable.

For the foregoing reason, I decline to exercise my discretion to extend the time to file the Appeal. Accordingly, the Motion dated 4th November 2024 is hereby dismissed with costs.

It is so ordered.



DATED AND DELIVERED AT NAIROBI THIS 7TH 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.

