



**Jim's Fresh Vegetable Growers & Exporters Limited v Locland Limited & another
(Civil Application E558 of 2024) [2025] KECA 233 (KLR) (7 February 2025) (Ruling)**

Neutral citation: [2025] KECA 233 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPLICATION E558 OF 2024
JM NGUGI, JA
FEBRUARY 7, 2025**

BETWEEN

JIM'S FRESH VEGETABLE GROWERS & EXPORTERS LIMITED . APPLICANT

AND

LOCLAND LIMITED 1ST RESPONDENT

AJIT PATEL 2ND RESPONDENT

*(Being an Application for grant of leave to file a substantive appeal
out of time against the decision of the Environment and Land Court at
Nairobi (Obaga, J.) dated 5th May, 2020 in ELC Case No. 277 of 2011)*

RULING

1. The Applicant herein brought a suit against the respondents in Nairobi ELC Case No. 277 of 2011. The parties had started negotiations over the sale of two parcels of land known as LR Kajiado/Kitengela/5110 and Kajiado/Kitengela/8125 (suit properties) as well as certain other assets and/or shares of the respondents. The negotiations apparently broke down and the applicant sued for a permanent injunction to restrain the 1st respondent or its servants or agents from selling, alienating, disposing of or dealing with the suit properties; an order for the transfer of the suit properties to itself as well as specific performance of an agreement for the sale of the assets/shares of the 1st respondent to itself which the applicant insisted it had completed. There was also a claim of damages under various heads.
2. The respondents defended the suit and countersued for an injunction; eviction of the applicant from the suit premises and damages.



3. In a judgment dated 5th May, 2020, E. O. Obaga, J. dismissed the applicant's suit and awarded costs to the respondents. The learned Judge also entered judgment in favour of the respondents as per the prayers sought in their counterclaim.
4. Aggrieved by the judgment, through the law Firm of Kaplan & Stratton Advocates (which had represented them at the superior court), the applicant timeously filed a Notice of Appeal on 12th May, 2020. However, no appeal was filed to date.
5. The applicant's present application is an attempt to remedy that failure. The application is dated 26th October, 2024 and seeks leave to file a substantive appeal out of time against the judgment delivered on 5th May, 2020. The application is supported by the supporting affidavit of Sudhir Kent sworn on 26th October, 2024.
6. In his affidavit, Sudhir claims that the applicant gave clear instructions to Kaplan & Stratton Advocates to advance the appeal and that it believed that an appeal had been timeously filed. However, despite receiving clear instructions the firm of Kaplan & Stratton Advocates failed to file the record of appeal within the time prescribed by law. Furthermore, "the law firm of Kaplan & Stratton Advocates exhibited a lack of diligence and commitment by failing to actively pursue the appeal process."
7. The applicant says that faced with the inaction by the Law Firm of Kaplan & Stratton Advocates and the looming threat of the adverse judgment being enforced, the applicant was compelled to seek alternative legal representation. Consequently, the applicant instructed the firm of Wambugu Muriuki & Company Advocates to take over the matter and "to ensure that the appeal was pursued with the necessary urgency."
8. The applicant is insistent that the failure by the applicant to file the record of appeal in a timely fashion was occasioned by the refusal by the law firm of Kaplan and Stratton Advocates to hand over the file to their new advocates. The applicant says it has now instructed the law firm of Ifile Casmir Advocates LLP to file a case of professional negligence against the law firm of Kaplan & Stratton Advocates as well as to regularize and the advance the intended appeal. Sudhir's affidavit displayed the demand letter written to the law firm of Kaplan and Stratton Advocates and the correspondence with that firm. There is a letter from the firm that indicates that the firm kept the files as its lien over its unpaid fees.
9. The applicant pleads with the Court to grant an extension of time to lodge its appeal and says that no prejudice will be suffered by the respondents if leave is granted since it will only permit it to ventilate its appeal.
10. There was nothing filed by the respondents in opposition to the application. I had sight of the hearing notice served by the Court on the counsel for the respondents.
11. This Court is empowered to grant extension of time under Rule 4 of the Court of Appeal Rules which provides that:

"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."



12. The principles on which this Court may exercise the discretion to extend time under Rule 4 were set out in *Leo Sila Mutiso v Hellen Wangari Mwangi* 2 EA 231 in which it was held as follows:

“It is now settled that the decision whether to extend the time for appealing is essentially discretionary. It is also well stated that in general the matters which this court takes in to account in deciding whether to grant an extension of time are, first the length of the delay, secondly the reasons 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.”

13. Similarly, in *Paul Wanjohi Mathenge v Duncan Gichane Mathenge* [2013] eKLR, which was cited by the applicant in its written submissions dated 12th November, 2024, the Court said:

“The discretion under Rule 4 is unfettered, but it has to be exercised judicially, not on whim, sympathy and caprice. I take note that in exercising my discretion, I ought to be guided by consideration of the factors stated in previous decisions of this Court, including but not limited to the period of delay, the reason for the delay, the degree of prejudice to the respondent and interested parties if the application is granted and whether the matter raises issues of public importance.”

14. In the present case, I note that while the period of delay is substantial – standing at a little more than three years – the circumstances explain that delay. The applicant had given instructions for the appeal to be filed; and it is shown that its former advocates commenced that action by timeously filing a Notice of Appeal. The applicant has also demonstrated some bona fides about the cause of the delay being the disagreement with its former lawyers: it has exhibited correspondence not only showing that it is contemplating legal action against the former lawyers but there is a letter from the former lawyers where it explicitly states that it would not release the records of the suit until its suit were fully paid.

15. In the circumstances of this case, I am inclined to exercise my discretion in favour of the applicant. I hereby extend leave to file the Record of Appeal in this appeal. The same shall be filed and served within fourteen (14) days from the date hereof.

16. There will be no order as to costs.

DATED AND DELIVERED AT NAIROBI THIS 7TH DAY OF FEBRUARY, 2025.

JOEL NGUGI

.....

JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR.

