



REPUBLIC OF KENYA



**KENYA LAW**  
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**Njoroge v Kabogo (Civil Application E335 of 2024)  
[2025] KECA 209 (KLR) (7 February 2025) (Ruling)**

Neutral citation: [2025] KECA 209 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAIROBI  
CIVIL APPLICATION E335 OF 2024  
JM NGUGI, JA  
FEBRUARY 7, 2025**

**BETWEEN**

**JANE NYAMBURA NJOROGE ..... APPLICANT**

**AND**

**SIMON NDEGWA KABOGO ..... RESPONDENT**

*(Being an Application for extension of time to file and serve an intended appeal out of time against the Judgement of the Environment and Land Court at Thika (Kemei, J.) dated 12th October, 2023 in ELC Case No. E131 of 2021)*

**RULING**

1. The applicant filed a suit at the Thika Environment and Land Court being Case Number E131 of 2021 seeking, in the main, a conservatory order restraining the respondent herein by himself or any person acting on his behalf from altering or rectifying the land registration record, taking possession, using or in any manner interfering with suit property LR. no. 48246/1-lr 7418/4/3 (suit property). The claim had a few other related prayers.
2. The respondent defended the suit and counterclaimed for an order for eviction.
3. That the suit was heard by Honourable Lady Justice J.G. Kemei and a Judgment was delivered on 12<sup>th</sup> October, 2023. The judgment dismissed the applicant's claim in its entirety and granted the respondent's counterclaim. Thereafter, a decree was issued on 10<sup>th</sup> January, 2024.
4. The applicant states that she was thoroughly dissatisfied with the judgment of the ELC. However, she did not timeously file her appeal. Her present application, dated 26<sup>th</sup> June, 2024 seeks leave to file and serve her appeal out of time against the judgment of 12<sup>th</sup> October, 2023. Her application is supported by her affidavit sworn on 26<sup>th</sup> June, 2023.



5. The applicant's affidavit avers that she had been ailing and "on bed rest for the better part of the year, 2023 and as such she was relying on her former advocate to update her on the progress." She was, thus, unaware that her case before the ELC was coming up for judgment on 12<sup>th</sup> October, 2023, and did not, therefore, attend court. Her advocate also failed to inform her that the judgment had been delivered dismissing her case. She claims that she first became aware of the judgment when the respondent descended on the suit property to place beacons. It was only then, she says, that she went to the court registry and was dismayed to find that judgment had been delivered on 12<sup>th</sup> October, 2023.
6. The applicant says that she is dissatisfied with the judgment and wishes to appeal against it. Her appeal, she insists, raises arguable points which have "extremely high chances of success" and that, therefore, "it is in the interest of justice" that she should be allowed to pursue her appeal by allowing the present application. She says that the delay in filing this application and the intended appeal is not inordinate and is excusable in the circumstances; and that unless the orders sought are granted, the applicant stands "to suffer prejudice since she will have been denied an opportunity to be heard on her intended appeal."
7. The application is opposed. The respondent filed a replying affidavit sworn on 26<sup>th</sup> August, 2024 in which he opines that the applicant's application is "devoid of merit, scandalous and an abuse of the court process" and should be dismissed with costs. He points out that the judgment was delivered more than six (6) months before the applicant brought her application and argues that this is an indication of nonchalance on the part of the applicant or worse, that she was indolent. It was her responsibility, the respondent insists, to follow up with her lawyer to find out the progress of the case.
8. The respondent asks the Court to note that he became the bona fide registered owner of the parcels after another case, to wit, Ruiru MCLE Case No. 48 of 2029: Simon Ndegwa v Monica Murugi Nyong'o (sued as the legal representative of Stephen Nyong'o). In that case, the respondent says, the applicant herein is not an outright beneficiary or administrator of the estate of the deceased but a daughter-in-law. As such, her suit in the trial court as well as the present appeal is a non-starter.
9. The respondent points out that the putative reason given by the applicant – that she was unwell – is not demonstrated through the medical records that she has exhibited. In any event, the respondent says that the interests of justice here should militate in his favor – in ending this litigation – since he is elderly at 89 years old; and in dire health conditions. He begs the court to bring this litigation to an end once and for all.
10. The parties filed their written submissions. Those of the applicant are dated 16<sup>th</sup> July, 2024 while those of the respondent are dated 24<sup>th</sup> January, 2024. I have keenly considered them as well as the application, the supporting affidavit, replying affidavit and their annexures.
11. The singular question before the Court is whether the Court should exercise its discretion to extend time for the applicant to file and serve a Notice of Appeal out of time.
12. Judgment in the ELC case was, as aforesaid, delivered on 12<sup>th</sup> October, 2023. Under Rule 77(2) of the Court of Appeal Rules, 2022, the applicant was required to lodge her Notice of Appeal within fourteen days. This application was, instead, brought about eight months later praying for the Court's indulgence to extent time to lodge and serve the Notice of Appeal.
13. 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.”

14. 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.”

15. In the present case, the applicant argues that she was unaware of the date of the judgment; and that her advocate did not inform her of the date. She also says that she was unwell, and on bedrest hence her inability to follow up with her lawyer. The determination whether or not the Court would extend the equitable embrace of Rule 4 to the applicant, therefore, turns on the credibility of the reason she gives for her delay of eight months. I have carefully looked at the applicant’s supporting affidavit and its annexures with this in mind. Three aspects are troubling and impugn the applicant’s narrative.

16. First, it is noteworthy that the applicant’s affidavit is quite parsimonious on important details. For example, she swears that she only became aware of the judgment when the respondent went to the suit property to put beacons sometime in May, 2024. She, then, went to the registry and that is when she found out that judgment had been delivered sometime in October, 2023. In her affidavit, the applicant does not explain exactly when she went to the registry; and why it took her more than a month (going by her own timeline) to bring the present application. If she was required by the Rules to file a Notice of Appeal within fourteen days of the impugned judgment, then she needed to explain the more than a month of delay in bringing the application.

17. Secondly, the medical notes attached to the applicant’s affidavit

- and indeed, her own affidavit – would seem to suggest that she was unwell and under doctor’s recommended bed rest sometime in 2023 – perhaps leading to early 2024. The last note from Murang’a Level 5 County Hospital is dated 15<sup>th</sup> January, 2024 and recommends that the applicant goes back to the clinic on 15<sup>th</sup> February, 2024. Even if the Court were to assume that the level of unwellness suffered by the applicant (which is by no means obvious from the sparse medical notes) was such that it prevented her from checking in on the progress of her case, this would not explain the lack of action between February and June, 2024.

18. Finally, while the applicant blames her former advocate for not informing her about the progress in her case, there is nothing other than her bald say-so to indicate that this may be true. There is no protest letter from her or her new advocates; no disciplinary proceedings or complaint against the alleged errant lawyer. There is no question that a lawyer who fails to communicate to his client that her case has been dismissed for six months, and, in the process, makes her miss out on her right to appeal, would be acting negligently. At the very least, there ought to be some indication that that lawyer was, indeed, to blame for that long delay.

19. In the end, therefore, I am not satisfied that the delay of eight months has been explained; and cannot, consequently, find that the delay is not inordinate or inexcusable. The upshot is that the applicant has



simply not brought herself within the equitable embrace of Rule 4 of the Court of Appeal Rules. I am, thus, unable to exercise my unfettered discretion under Rule 4 to extend time.

20. The Application dated 26<sup>th</sup> June, 2024 is devoid of merit. It is hereby dismissed with costs to the respondent.

**DATED AND DELIVERED AT NAIROBI THIS 7<sup>TH</sup> DAY OF FEBRUARY, 2025.**

**JOEL NGUGI**

.....

**JUDGE OF APPEAL**

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

Signed

**DEPUTY REGISTRAR.**

