



**Murimi v Kabiru & 2 others (Both as the Chairman and Treasurer of Kagaki Irrigation Water Self Help Group) (Civil Application E007 of 2025) [2025] KECA 564 (KLR) (28 March 2025) (Ruling)**

Neutral citation: [2025] KECA 564 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NYERI  
CIVIL APPLICATION E007 OF 2025  
JW LESSIT, JA  
MARCH 28, 2025**

**BETWEEN**

**SYLVANS KINYUA MURIMI ..... APPLICANT**

**AND**

**GEORGE KABIRU ..... 1<sup>ST</sup> RESPONDENT**

**MATHENGE HELLEN ..... 2<sup>ND</sup> RESPONDENT**

**WAKONYU HIUHU ..... 3<sup>RD</sup> RESPONDENT**

**BOTH AS THE CHAIRMAN AND TREASURER OF KAGAKI IRRIGATION  
WATER SELF HELP GROUP**

*(An application for extension for time to file and serve Memorandum of Appeal and Record of Appeal out of time against the Judgment and Orders of the High Court of Kenya at Nyeri (K. Magare, J.) delivered on 14th May, 2024 in H.C. Civil Appeal No. E015 of 2023)*

**RULING**

1. The applicant, Sylvans Kinyua Murimi has by the notice of motion application dated 22<sup>nd</sup> January 2025 brought pursuant to rule 4 of this Court’s Rules sought the following orders:
  - “2. That this Honourable Court be pleased to extend the time for filing and serving the Memorandum of Appeal and the Record of Appeal.
  3. That the annexed Memorandum of appeal be deemed to have been properly filed within the prescribed time frame.
  4. That the cost of this application be in the cause.”



2. The application is premised by grounds on the face of the application and those in the supporting affidavit sworn by the applicant, both dated 22<sup>nd</sup> January 2025. I have considered this application, the affidavits sworn by both sides and the annexures thereto; as well as the submissions by both counsel.
3. It is settled law by a plethora of cases of this Court and the Supreme Court that the Court's discretion in an application for extension of time to file an appeal or memorandum and record of appeal is unfettered so long as they are exercised judiciously and on the settled principles that guide such a determination. See *Leo Sila Mutiso vs. Rose Hellen Wangare Mwangi*, [1999] 2 EA 231; *Nicholas Kiptoo Arap Korir Salat vs. Independent Electoral and Boundaries Commission & 7 Others* [2014] KESC 12 (KLR) and *Andrew Kiplagat Chemaringo vs. Paul Kipkorir Kibet* [2018] eKLR.
4. It is clear that the discretion to extend time is indeed unfettered. It is incumbent upon the applicant to explain the reasons for delay in making the application for extension and whether there are any extenuating circumstances that can enable the Court to exercise its discretion in his favour. The applicant must satisfy that there exists reasonable explanation for the delay; that the delay is not unreasonable or inordinate and that he has an arguable appeal.
5. The applicant's explanation for the delay was that whereas the judgment of the High Court was delivered via teams by Kizito Magare, J. the Judge was then stationed in Mombasa, he averred that the physical file which was returned from Mombasa Court to Nyeri High Court on 18<sup>th</sup> June, 2024, and that it contributed to the delay in preparing the proceedings.
6. The applicant avers that he did not receive the certified copies of proceedings until 24<sup>th</sup> October, 2024 and that the delay was beyond his control. He has annexed a receipt to show he paid for the proceedings on 21<sup>st</sup> May, 2024 and a certificate of delay that shows that the period needed to prepare the proceedings was between 21<sup>st</sup> May, 2024 and 2<sup>nd</sup> October, 2024. He has also annexed a letter bespeaking proceedings dated 16<sup>th</sup> May, 2024 which was to be served upon Messrs. Mercy Kabethi advocates. The respondents have not mentioned anything about the letter, despite it being attached to the application alongside the other annexures I have alluded to, that were served upon them.
7. The applicant avers that the memorandum of appeal and the record of appeal were not filed within the time prescribed by the Court of Appeal Rules and hence the need for leave to file the said documents out of time.
8. The application is vehemently opposed by both respondents who have sworn a joint replying affidavit dated 30<sup>th</sup> January, 2025. They dismiss the application as being vexatious, and an afterthought without any merits which should be dismissed with costs. They aver that no explanation has been given for the extended delay since mid- November, 2024 when the applicant appointed counsel to represent him, and aver that the law does not aid the indolent litigant and ignorance has never been a defence in law.
9. It is my finding that the delay involved in this case is neither inordinate nor unreasonable. That is whether the delay is considered against the letter bespeaking the proceedings, which would mean from 2<sup>nd</sup> October, 2024 when the proceedings were ready for collection, or from 60 days from the date of filing the notice of appeal on 24<sup>th</sup> May, 2024. The explanation that the physical file of the High Court proceedings was not available for typing until 18<sup>th</sup> June, 2024 and the record was only ready by 2<sup>nd</sup> October, 2024, are circumstances beyond the control of the applicant. He could not have served a record that did not exist. The real delay is therefore from 2<sup>nd</sup> October, 2024 when the proceedings were ready for collection. All in all, three months delay, considering the period that the time stops running in December, the delay is not unreasonable. Further, the explanation is also acceptable.



10. I am satisfied that the applicant has satisfied the requirements for consideration of this application in her favour. Accordingly, I allow the applicant's application dated 22<sup>nd</sup> January, 2025, grant the applicant thirty (30) days to file the memorandum and record of appeal, and 14 days from date of filing to serve the respondent. The costs of this application will be in the appeal.

**DATED AND DELIVERED AT NYERI THIS 28<sup>TH</sup> DAY OF MARCH, 2025.**

**J. LESIIT**

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**JUDGE OF APPEAL**

I certify that this is a true copy of the original

Signed

**DEPUTY REGISTRAR**

