



Tanui & 3 others v Ruigu & 2 others; Registrar of Titles (Nairobi Registry) & another (Interested Parties) (Civil Application E559 of 2024) [2025] KECA 513 (KLR) (21 March 2025) (Ruling)

Neutral citation: [2025] KECA 513 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPLICATION E559 OF 2024
M NGUGI, JA
MARCH 21, 2025
[IN CHAMBERS]**

BETWEEN

**SOLOMON K TANUI 1ST APPLICANT
WILSON I KIMANI 2ND APPLICANT
JIMMY KIMARU 3RD APPLICANT
MOSES K SAINA 4TH APPLICANT**

AND

**MARTIN RUIGU 1ST RESPONDENT
NICHOLAS NJOROGE NJENGA 2ND RESPONDENT
JENNIFER WANGUI NJENGA 3RD RESPONDENT**

AND

**REGISTRAR OF TITLES (NAIROBI REGISTRY) INTERESTED PARTY
THE HONOURABLE ATTORNEY GENERAL INTERESTED PARTY**

(Being an application for leave to lodge a notice of appeal out of time from the ruling of the Environment and Land Court in Machakos (C. Ochieng J.) dated 3rd October 2024 in ELC No. 13 of 2023)

RULING

1. In the application dated 28th October 2024, the applicants seek leave to file their notice of appeal out of time from the ruling of the Environment and Land Court in Machakos (C. Ochieng J.) dated 3rd October 2024. The application is brought under rules 4 and 77(2) of the [Rules of this Court](#).



2. The applicants state in the grounds forming the basis of the application and the affidavit in support sworn by Wilson Irungu Kimani that the trial court delivered the ruling dated 3rd October 2024 in the absence of the parties. That while the court had indicated that it would deliver the ruling on that date, it was not listed in the cause list for the day. When they checked in the court portal, they found that it was indicated that the ruling would be delivered on 4th November 2024, a date that was given suo motu by the court as none of the parties was involved.
3. They aver that it was only on 25th October 2024, when their advocates' clerk visited the ELC Registry in Machakos, that they learnt that the ruling had been delivered on 3rd October 2024. They instructed their advocates to appeal against the ruling, but by that time, the 14-day period for lodging the notice had lapsed, so they filed the present application seeking leave to file the notice out of time. The applicants attribute the delay in filing the notice to the failure by the court to send the delivery notice or the ruling to the parties' respective emails, as was the practice. It is their averment that the respondents will not be prejudiced should the Court grant the orders that they seek.
4. The application is opposed by an affidavit sworn in response thereto by Nicholas Njoroge Njenga on 3rd February 2025. The response is addressed more to the merits of any appeal filed than the issues for consideration in an application under rule
4. The respondents note that the impugned ruling required the applicants to enter a defence to explain the root of their title, which they have failed to do; and that the suit is still active in the lower court where the applicants ought to have filed their statement of defence.
5. The applicants filed submissions dated 8th November 2024 while the respondents filed submissions dated 3rd February 2025.
6. In exercising discretion under rule 4 of this Court's Rules to extend time to do any act prescribed under the Rules, the Court is required to consider, 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 lastly, the degree of prejudice to the respondent if the prayers sought are granted-see *Leo Sila Mutiso v Rose Hellen Wangui Mwangi* (1999)2 EA 231 and *Mwangi v Kenya Airways Ltd* (2003) KLR 486.
7. The respondents oppose the application primarily on the ground that the applicants do not have an appeal that stands any chance of success, and that instead of filing this application, they should have filed their statement of defence in the lower court as directed by the court in the impugned ruling. The respondents may well be correct, but those are not the primary considerations in an application under rule 4.
8. The ruling that the applicants seek to appeal from was delivered on 3rd October 2024. As prescribed under rule 77 of the *Rules of this Court*, the notice of appeal should have been filed on or before 17th October 2024. The applicants aver that they only learnt that the ruling had been delivered on 25th October 2024 when their advocates' clerk visited the court registry. They filed this application three days later, on 28th October 2024. This was 25 days after the ruling, and 11 days after the expiry of the statutory timeline for filing the notice of appeal.
9. The applicants attribute the delay to the fact that the court did not list the matter as coming up for ruling on 3rd October 2024, nor did it email the ruling to them after delivery, as was the practice.
10. The period of delay in filing the notice of appeal, in my view, is not inordinate. More importantly, it has been explained satisfactorily as having arisen as a result of lack of communication from the court. It is my finding, therefore, that the application dated 28th October 2024 is merited, and it is hereby allowed.



11. The applicants shall file and serve their notice of appeal within 14 days from the date hereof. There shall be no order as to costs.

DATED AND DELIVERED AT NAIROBI THIS 21ST DAY OF MARCH, 2025

MUMBI NGUGI

JUDGE OF APPEAL

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

signed

DEPUTY REGISTRAR

