



**Kamau v Mburu (Civil Application E010 of 2025)
[2025] KECA 570 (KLR) (14 March 2025) (Ruling)**

Neutral citation: [2025] KECA 570 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NYERI
CIVIL APPLICATION E010 OF 2025
S OLE KANTAI, JA
MARCH 14, 2025**

BETWEEN

ESTHER NUNGARI KAMAU APPLICANT

AND

SUSAN WANJIRU MBURU RESPONDENT

(An application for extension of time to file and serve the Notice of Appeal out of time from the Judgment and Order of the Environment and Land Court at Muranga (L. Gacheru, J.) delivered on 17th October, 2024 in E.L.C. Case No. E004 of 2022.)

RULING

1. The applicant, Esther Nungari Kamau has approached the Court under rules 1, 4 and 77 of the [Court of Appeal Rules, 2022](#) praying that Notice of Appeal lodged on 14th November, 2024 be deemed as properly filed and properly on record and that she be granted leave to file and serve appeal arising out of Muranga ELC E004 of 2022 out of time. In grounds in support of the application and in her supporting affidavit she says amongst other things that judgment was delivered on 12th October, 2024 in the absence of her lawyer; that a notice of appeal was lodged on 14th November, 2024 which was out of time and it was served on counsel for the respondent on 15th November, 2024; that delay was occasioned by complications in change of advocates because she had not paid fees to her previous lawyer and was unable to access her file; that she is ready to file an appeal once the position is regularized by time to do so being extended. Further, that a request for proceedings was made on 11th November, 2024 within time; that she is about 90 years, a fact which affects her mobility; that she is aggrieved by the judgment and would suffer irreparable loss if the judgment is implemented as she would lose her ancestral land. Attached to the motion is a copy of the judgment where the respondent’s Originating Summons was allowed with costs; a copy of a consent between the applicant’s previous advocates agreeing to the current advocates to take over the matter, notice of appeal lodged at Environment and Land Court (ELC) at Muranga on 14th November, 2024; a copy of letter bespeaking proceedings



dated 11th November, 2024 copied to M/s Waithera Mwangi & Co., Advocates; draft Memorandum of Appeal, amongst other documents.

2. There is a replying affidavit by the respondent Susan Wanjiru Mburu who deposes that the affidavit in support of the Motion is defective; that the trial Court set the matter for a mention to enable the applicant's counsel file written submissions which they had not done, submissions were filed and judgment reserved for 17th October, 2024; that the applicant did not make a follow up of what was going on at ELC; that notice of appeal was lodged late and the application before me was also filed late without explanation; that the applicant and her previous lawyers have not explained why they did not attend court for judgment; that the application lacks merit and should be dismissed.
3. I have seen and considered written submissions filed by both sides in this matter.
4. The principles that apply in an application of this nature were well summarized by this Court in *Leo Sila Mutiso v Rose Hellen Wangari Mwangi* [1999] 2 EA 231 as follows:

“It is now well settled that the decision whether or not to extend the time for appealing is essentially discretionary. It is also well stated 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.”
5. The applicant says that she had a lawyer to act for her in the ELC but was unable to pay professional fees on time to enable a notice of appeal to be lodged on time. She further says that it took a while for her to appoint another lawyer to represent her; that her previous lawyer held onto the file until his fees was paid and that by that time the time set for filing notice of appeal had since lapsed. She says she is about 90 years old.
6. I note that judgment of ELC was delivered on 17th October, 2024. Notice of Appeal dated 11th November, 2024 was lodged on 14th November, 2024, less than a month after delivery of judgment. The application for leave to enlarge time is dated 23rd January, 2025.
7. I am of the view that there is no unreasonable delay in bringing the application in the circumstances which the applicant, who is 90 years old, found herself. She took reasonable steps to retrieve her file from her previous lawyer but was hampered by inability to raise the lawyer's fees immediately. When she was able to get her file her new lawyers immediately entered into agreement with the previous lawyer for the new lawyer to come on record; proceedings were applied for timeously and necessary steps taken to correct the situation where a notice of appeal was lodged out of time. There is no unreasonable delay and I accept the reasons given for delay.
8. On the possibility of the appeal succeeding I note that the applicant says that she will lose her ancestral land if the judgment of ELC is not challenged on appeal. The respondent approached that Court through an Originating Summons claiming land as a purchaser and also as owner by adverse possession. There is an arguable appeal.
9. I do not think that the respondent will be prejudiced if I allow the application where the applicant is exercising her right of appeal.
10. I allow the Motion. The Notice of Appeal dated 11th November, 2024 lodged on 14th November, 2024 is deemed as duly and properly filed. Let a record of appeal be lodged within twenty one (21) days of today. Costs of the Motion will be in the appeal.



DATED AND DELIVERED AT NYERI THIS 14TH DAY OF MARCH, 2025.

S. ole KANTAI

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JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

