



REPUBLIC OF KENYA



KENYA LAW
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**Kimani v Kimani (Civil Appeal (Application) 089 of 2024)
[2025] KECA 658 (KLR) (9 April 2025) (Ruling)**

Neutral citation: [2025] KECA 658 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAKURU
CIVIL APPEAL (APPLICATION) 089 OF 2024
PM GACHOKA, JA
APRIL 9, 2025**

BETWEEN

ANDREW KIMANI APPLICANT

AND

JECINTA WANJIKU KIMANI RESPONDENT

(An application for extension of time to file an appeal from the judgment and decree of the Environment and Land Court at Nakuru (L.A. Omollo) delivered on 11th April 2024 in ELC Case No. 85 OF 2018)

RULING

1. In his Notice of Motion dated 18th September 2024, the applicant's application is hinged on the provisions of Article 159 of *the Constitution*, sections 3, 3A and 3B of the *Appellate Jurisdiction Act* and Rules 4, 33, 44, 45, 49, 55 and 56 of the Court of Appeal Rules. He seeks for leave to appeal out of time against the judgment and decree of L.A. Omollo, J. in Nakuru ELC Case No. 85 of 2018 delivered on 11th April 2024. The application is grounded on the reasons set forth in the application and the applicant's supporting affidavit sworn on even date as follows:

the applicant filed Nakuru ELC No. 85 of 2018 against the respondent seeking to evict the respondent from land parcel no. Nakuru/Gichobo/509. The respondent entered appearance and filed her statement of defence and counterclaim. By judgment of the trial court delivered on 11th April 2024, the applicant's claim was dismissed while the respondent's claim was allowed. The applicant is aggrieved with those findings. He filed his notice of appeal dated 6th June 2024 albeit out of time.

2. The applicant urged this Court to allow the application because the impugned judgment was delivered without notice and in the absence of both parties and their respective Counsel. He only learnt of judgment on 6th June 2024 upon inquiring from the court registry. He has also since applied for



certified copies of the proceedings and judgment. He is apprehensive that the respondent was likely to commence execution and therefore seeks leave to appeal out of time in order to file an application for stay. Annexing his memorandum of appeal, he stated that he had arguable grounds of appeal that raised triable issues. He prayed that the application be allowed as it was in the interest of justice.

3. The application remained unopposed. Pursuant to the directions of the Court, the application was heard on the basis of the parties' written submissions. However, as at the time of writing this ruling, I was only impressed with the applicant's written submissions dated 25th March 2025 which urged this Court to allow the application as it was merited.
4. Under Rule 4 of this Court's Rules, the Court may extend time for the doing of an act authorized under the Rules. The constituent elements in succeeding in an application of this nature have been well settled in our jurisdiction. This Court in *Fahir Mohammed vs. Joseph Mugambi & 2 Others* Civil Application NAI 332/04 (ur) summarized the principles as follows:

“The exercise of this Court's discretion under Rule 4 has followed a well-beaten path since the stricture of “sufficient reason” was removed by amendment in 1985. As it is unfettered, there is no limit to the number of factors the Court would consider so long as they are relevant. The period of delay, the reason for the delay, (possibly) the chances of the appeal succeeding if the application is granted, the degree of prejudice to the respondent if the application is granted, the effect of the delay on public administration, the importance of compliance with time limits, the resources of the parties, whether the matter raises issues of public importance – are all relevant but not exhaustive factors: see *Mutiso vs Mwangi*, Civil Application No. Nai. 255 of 1997 (ur), *Mwangi vs Kenya Airways Ltd* [2003] KLR 486.”

5. In this application, the applicant has explained that he only learned of the impugned judgment on 6th June 2024. He then moved with speed and filed his notice of appeal dated 6th June 2024. The applicant stated that parties were not notified of the judgment date and were consequently absent. That may have been the case since the coram in the judgment revealed that none of the parties were present when judgment was delivered on 11th April 2024.
6. Noticeably, even after the notice of appeal dated 6th June 2024 was filed, the applicant only lodged this application three months after the date of the notice of appeal. That amounts to an inordinate delay and the applicant has not explained why it took that much time to file the present application. A party that has delayed in complying with the timelines set out in the rules owes the Court an explanation for the delay. However, looking at the application in totality and taking into account that the applicant did not receive the notice of the judgment, justice militates towards sustaining rather than dismissing the application. To this end, I will allow the application as follows:
 1. {The applicant shall file and serve its notice of appeal within 7 days from the date of this order;
 2. Thereafter the record of appeal shall be filed and served within 45 days;
 3. If the orders in (1) and (2) above are not complied with, the orders granted shall lapse automatically without any further reference to this Court;
 4. The costs of the application shall abide the outcome of the intended appeal.

DATED AND DELIVERED AT NAKURU THIS 9TH DAY OF APRIL 2025.

M. GACHOKA C.Arb, FCI Arb.

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JUDGE OF APPEAL

I certify that this is a True copy of the original

Signed

Deputy Registrar

