



**Macharia & 3 others v Gakuu & another (Civil Application  
E462 of 2024) [2025] KECA 1015 (KLR) (30 May 2025) (Ruling)**

Neutral citation: [2025] KECA 1015 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAIROBI  
CIVIL APPLICATION E462 OF 2024**

**W KARANJA, JA**

**MAY 30, 2025**

**BETWEEN**

**JOYCE WANJIRU MACHARIA ..... 1<sup>ST</sup> APPLICANT  
PETER MATHU ..... 2<sup>ND</sup> APPLICANT  
ANNEFA LIMITED ..... 3<sup>RD</sup> APPLICANT  
JOSTEPA INVESTMENT CO LIMITED ..... 4<sup>TH</sup> APPLICANT**

**AND**

**PATRICK KARANJA GAKUU ..... 1<sup>ST</sup> RESPONDENT  
SAMSON MWANGI NJOROGE ..... 2<sup>ND</sup> RESPONDENT**

*(An application for extension of time to lodge the Record of Appeal of the judgment and decree of the Environment and Land Court in Thika (J.G. Kemei, J.) dated 15th November 2023 in ELC Case No. E027 of 2022)*

**RULING**

1. The applicants herein were aggrieved by the judgment of the Environment and Land Court Thika (J.G. Kemei, J.) delivered on 15<sup>th</sup> November 2023. They say that they filed the notice of appeal on time (although no copy of the court stamped or lodged notice of appeal is annexed to the application). However, the record of appeal was not filed on time as required by the Court of Appeal Rules. The applicants have now moved to this Court by way of the notice of motion dated 6<sup>th</sup> September 2024 under Rule 4 of the Court of Appeal Rules seeking extension of time to file the record of appeal.
2. The grounds proffered for the delay in filing the record of appeal are that the applicant received the typed proceedings outside the window allowed to lodge a record of appeal; that the intended appeal



has high chances of success and that the respondents will not suffer any prejudice if the application is allowed.

3. The application is supported by the affidavit of Joyce Wanjiru Macharia, the 1<sup>st</sup> applicant, sworn on 6<sup>th</sup> September 2024. She depones that they lodged the notice of appeal on time and that on 24<sup>th</sup> November 2023, they applied for typed proceedings, decree and certified copies of judgment and made the requisite payment at the registry. She stated that they also served the respondents with the letter requesting for the proceedings which the applicant deposes is marked “JWM2”.
4. However, from the record before me, annexure “JWM 2” is a letter dated 2<sup>nd</sup> February 2024 addressed to the Deputy Registrar Environment and Land Court, at Thika. That letter is not copied to counsel for the respondent, nor was it served on them. What strikes me however, is the fact that the letter was clearly outside the 30 days window provided for under Rule 84(1) of the Court of Appeal Rules which provides –

- “(1) Subject to rule 118, an appeal shall be instituted by lodging in the appropriate registry, within sixty days after the date when the notice of appeal was lodged—
- a. a memorandum of appeal, in four copies;
  - b. the record of appeal, in four copies;
  - c. the prescribed fee; and
  - d. security for the costs of the appeal:

Provided that where an application for a copy of the proceedings in the superior court has been made in accordance with sub-rule (2) within thirty days after the date of the decision against which it is desired to appeal, there shall, in computing the time within which the appeal is to be instituted, be excluded such time as may be certified by the registrar of the superior court as having been required for the preparation and delivery to the appellant of such copy.”

That being so, the applicant cannot seek refuge under the proviso to Rule 84 and also Rule 84(2) of the Court of Appeal Rules.

5. The non-compliance with the above rule makes the applicants’ notice of motion dead on arrival and even though there is no replying affidavit, the orders sought cannot be granted. The application does not pass muster and the same is dismissed with no order as to costs as it was not opposed.

**DATED AND DELIVERED AT NAIROBI THIS 30<sup>TH</sup> DAY OF MAY 2025.**

**W. KARANJA**

.....

**JUDGE OF APPEAL**

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

Signed

**DEPUTY REGISTRAR**

