



REPUBLIC OF KENYA



**Kuria & 19 others v Karanja (Civil Application E098 of 2024)  
[2025] KECA 860 (KLR) (15 May 2025) (Ruling)**

Neutral citation: [2025] KECA 860 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAKURU  
CIVIL APPLICATION E098 OF 2024  
GV ODUNGA, JA  
MAY 15, 2025**

**BETWEEN**

**EDDY KURIA ..... 1<sup>ST</sup> APPLICANT**  
**CHRISTOPHER M KAMAU ..... 2<sup>ND</sup> APPLICANT**  
**MARGARET WANJA ..... 3<sup>RD</sup> APPLICANT**  
**DAVID ADAMS MBUGUA ..... 4<sup>TH</sup> APPLICANT**  
**DAVID MBURU GITHERE ..... 5<sup>TH</sup> APPLICANT**  
**WK KIBET ..... 6<sup>TH</sup> APPLICANT**  
**CATHERINE KOSKEI ..... 7<sup>TH</sup> APPLICANT**  
**BEATRICE WANGARI ..... 8<sup>TH</sup> APPLICANT**  
**AUGUSTINE LOMONGIN ..... 9<sup>TH</sup> APPLICANT**  
**JACQUELINE ADHIAMBO ..... 10<sup>TH</sup> APPLICANT**  
**STEPHEN NJOROGE KANYORO ..... 11<sup>TH</sup> APPLICANT**  
**MOHAMMED OSMANI HASSAN ..... 12<sup>TH</sup> APPLICANT**  
**GLADYS WAIRIMU GICHAGA ..... 13<sup>TH</sup> APPLICANT**  
**EMMANUEL J NJAU ..... 14<sup>TH</sup> APPLICANT**  
**JANE CHAKA NDIGA ..... 15<sup>TH</sup> APPLICANT**  
**SUSAN K CHASIALE ..... 16<sup>TH</sup> APPLICANT**  
**EVERRLYN NYAMBURA ..... 17<sup>TH</sup> APPLICANT**  
**SK KOSGEY ..... 18<sup>TH</sup> APPLICANT**  
**AGNES WANJIKU KARIUNGI ..... 19<sup>TH</sup> APPLICANT**



LEAH NJERI KARANJA ..... 20<sup>TH</sup> APPLICANT

AND

HARRISON NJERI KARANJA ..... RESPONDENT

*(Being an application for leave to file an application to strike out a Notice of Appeal from the judgement of the High Court at Nakuru (R.P.V Wendoh, J) delivered on 20th December, 2018 in HCC No. 110 of 1998)*

### RULING

1. Rule 86 of the [Court of Appeal Rules](#) provides that:

“A person affected by an appeal may, at any time, either before or after the institution of the appeal, apply to the Court to strike out the notice or the appeal, as the case may be, on the ground—

- a. that no appeal lies; or
- b. that some essential step in the proceedings has not been taken or has not been taken within the prescribed time:

Provided that an application to strike out a notice of appeal or an appeal shall not be brought after the expiry of thirty days after the date of service of the notice of appeal or record of appeal, as the case may be.”

2. Before me is the applicants' Notice of Motion dated 14<sup>th</sup> October, 2024, seeking, inter alia, orders that:

- a. Leave be granted to the applicants to file their application to strike out the Notice of Appeal dated 26<sup>th</sup> July 2024 late and/or out of time.
- b. In the alternative, the Court is to find it just and fit to extend the time for filing an application to strike out the Notice of Appeal dated 26<sup>th</sup> July 2024 for being improperly filed and having been filed by a stranger purportedly the Interested Party/Respondent herein, thereby lacking the necessary *locus standi* to appear and/or lodge an Appeal before this Court.

3. The application is premised on the grounds that: the Notice of Appeal dated 26<sup>th</sup> July 2024 has been filed by a stranger to the suit; that it has been filed by an Interested Party who lacks *locus standi* to lodge an appeal before this Court when he is not a party to the suit; that the ruling delivered on 12<sup>th</sup> July 2024 by Korir JA. found the application dated 18th July 2023 seeking leave to file Notice of Appeal out of time an afterthought as it was brought with inordinate delay of 5 years from the date of the judgment; that the applicants stand to suffer substantial loss and prejudice since they have been dragged back in court with an improperly filed appeal by the appellant in an old matter; that the delay in filing the application is 1 week, which has been occasioned by the advocate and not the applicant; and, it is in the interest of justice and fairness that this Court does grant the prayers sought.

4. In support of the application, the applicants' Advocate Kahiga Waitindi avers that: the Interested Party/Respondent filed an application serialized as Nakuru Civil Appeal Application No E082 of 2023 dated 18th July 2023 seeking the court's leave to file the Intended Notice of Appeal out of time; that the Interested Party/Respondent is not a party nor a litigant to the suit and therefore lacks the requisite *locus standi* to make an appeal or any application before this Court and the same ought to be dismissed



ab initio; for the interested Party to be joined, there would need to be an existing appeal which does not exist as the Appellants failed to file for an appeal within the requisite time; that the appeal does not stand a chance of success considering that the Appellant have failed to comply with the rules of practice and procedure in filing the intended appeal; and that the Notice of Appeal dated 26<sup>th</sup> July 2024 and filed on 3<sup>rd</sup> September 2024 should be deemed as struck out, withdrawn for being defective and overtaken by events.

5. The Applicants submit that under Rule 86 of this Court’s Rules, an Applicant seeking to strike out the Notice of Appeal should file such application within 30 days after the date of service of the Notice of Appeal or Record of Appeal; that where there has been an inadvertence leading to lapse of time but without inordinate delay, a litigant is allowed to file an application to seek leave to file an application to strike out a Notice of Appeal after 30 days; that the exercise of granting leave to a litigant to file an application to strike out a Notice of Appeal lies on the unfettered jurisdiction of this Court, which should be exercised judicially (see *Wanjobi Mathenge v Duncan Gichane Mathenge* [2013] eKLR); that the Interested Party lacks the requisite locus to institute the appeal as he was not a party in the proceedings (see *Christopher Mutiembu Machimbo & 3 others v County Surveyor, Trans Nzoia & 4 others* [2022] eKLR; and that this application has been brought without inordinate delay, thus only fair and just that the orders sought are granted.
6. The application was not opposed.
7. Rule 4 of the Court’s Rules provides that:

“The Court may, on such terms as may be just, by order, extend the time limited by these Rules, or by any decision of the Court or of a superior court, for the doing of any act authorized or required by these Rules, whether before or after the doing of the act, and a reference in these Rules to any such time shall be construed as a reference to that time as extended.”
8. It follows that the principles applicable to extension of time in respect to the other provisions of the Rules apply with equal force to the present application.
9. The law as regards the principles to be applied by the court when considering an application brought under rule 4 of the *Court of Appeal Rules* are well settled. This Court has unfettered discretion to extend the time prescribed for taking any action permitted under the Rules. However, like all judicial discretions, the Court has to exercise the same discretion upon reasons and not upon the whims of the Court. To guide the Court on what to consider when exercising the same discretion, the case law has established certain considerations that the Court would look into. These are first the period of the delay; secondly, the reasons for such a delay; thirdly (possibly), whether the proceedings for which time is sought to be extended is frivolous; and fourthly, whether the respondent in those proceedings will be unduly prejudiced if the application were to be granted. See *Leo Sila Mutiso v Helen Wangari Mwangi*, Civil Application No Nai. 255 of 1997 [1999] 2 EA 231.
10. In this case the delay is said to be one week which is not inordinate and it is placed on the doorsteps of the advocate. This Court, while citing *Murai v Wainaina, (No 4)* [1982] KLR 38, in *Sbital Bimal Shah & 2 others v Akiba Bank Limited*, Civil Appeal (Application) No 159 of 2005 [2006] 2 EA 323 held that:

“Mistakes of counsel come in all shapes and sizes but some have been rejected by the Court such as total inaction by counsel disguised as a mistake. A mistake is a mistake. It is no less a mistake because it is an unfortunate slip. It is no less pardonable because it is committed



by a senior counsel though in the case of junior counsel the court might feel compassionate more readily. A blunder on a point of law can be a mistake. The door of justice is not closed because a mistake has been made by a person of experience who ought to have known better. The court may not forgive or condone it but it ought certainly to do whatever is necessary to rectify it if the interest of justice so dictate.”

11. Since the respondent has not opposed the application, no prejudice is alleged. as appreciated by Waki, JA, while citing *Grindlays Bank International (K) & another v George Barbour*, Civil Application No Nai. 257 of 1995 and *Gichuhi Kimira v Samuel Ngunu Kimotho & another*, Civil Application No Nai. 243 of 1995 in *Janet Ngendo Kamau v Mary Wangari Mwangi*, Civil Application No Nai. 338 of 2002:

“Unless there is fraud, intention to overreach, inordinate delay or such other circumstances disentitling a party to the exercise of the Court’s discretion, the Court should in so far as it may be reasonable prefer, in the wider interest of justice, to have a case decided on its merits... The consideration that one case should not hang over the heads of parties indefinitely must be weighed against the wider interests of justice, namely that where possible cases must be brought to a close after a hearing on the merits.”

12. In the premises I find merit in the Notice of Motion dated 14<sup>th</sup> October, 2024 and extend time to the applicants to apply for the striking out of the Notice of Appeal dated 26<sup>th</sup> July 2024. Let the application be filed and served within 14 days from the date of this ruling. There will be no order as to the costs of the application.

13. It is so ordered.

**DATED AND DELIVERED AT NAKURU THIS 15<sup>TH</sup> DAY OF MAY, 2025.**

**G. V. ODUNGA**

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**JUDGE OF APPEAL**

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

Signed

**DEPUTY REGISTRAR**

