



**Muasya v Kilonzo & 2 others (Civil Application E488 of 2024)
[2025] KECA 1111 (KLR) (20 June 2025) (Ruling)**

Neutral citation: [2025] KECA 1111 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPLICATION E488 OF 2024**

**F SICHALE, JA
JUNE 20, 2025**

BETWEEN

AMY MUASYA APPELLANT

AND

HENRY MUNYAO KILONZO 1ST RESPONDENT

**KATELEMBO ATHIANI MUPUTI COOPERATIVE SOCIETY 2ND
RESPONDENT**

MACHAKOS LAND REGISTRAR 3RD RESPONDENT

*(Being an Application for Extension of Time to file an Appeal and Record of
Appeal against the Judgment and Orders of the Environment and Land Court in
Machakos (C.A Ochieng J), dated 13th May 2024 in Machakos ELCA No. 18 of 2020)*

RULING

1. Before me is the notice on motion dated 27th September 2024, brought pursuant to the provisions of Rules 1(2), 4, 31,39,41,42, 43,47,53 and 75 of the Court of Appeal Rules (2010), Sections 3 (2), 3A and 3B of the *Appellate Jurisdiction Act* (CAP 9 of the Laws of Kenya) and Articles 27 (1), 40, 50 (1) and 159 (2) (a), (b), (d) and (e) of the Constitution of Kenya in which Amy Muasya (“the applicant herein”), seeks the following orders;
 - “i. Spent.
 - ii. That the Honourable Puisne Judges (sic) be pleased to grant leave to the applicant/intended appellant herein to appeal and file Record of Appeal out of time against the judgment and Orders of Hon. Lady Justice Christine A. Ochieng delivered on 13th May 2024 in ELCA 18/2020 (Environment & Land Court) Henry Munyao Kilonzo Vs Amy Muasya & 2 Others).



- iii. This Honourable Court do issue such other directions and/or Orders as the Court may deem just and expedient to grant.
 - iv. Costs of this application be in the cause of the intended appeal.”
2. The motion is supported on the grounds on the face of the motion and an affidavit sworn by the applicant who deposed inter alia that being dissatisfied with the judgment delivered by the Environment and Land Court in Machakos (C.A Ochieng J), on 13th May 2024, she lodged a Notice of Appeal against the same and subsequently applied for typed proceedings to facilitate lodging of the main appeal before the Court of Appeal.
 3. That, she was notified that the proceedings were ready for collection on 25th September 2024, which was 132 days from the date when the same was applied for and that further she was issued with a Certificate of Delay to that effect.
 4. She thus deposed that the delay in filing the Record of Appeal was occasioned by the delay in the proceedings, which delay should not be visited upon her and that further, the respondents who had been duly served with the Notice of Appeal would not be prejudiced by the extension of time as the property is still intact.
 5. There was no response on part of the respondents despite having been served with a copy of the application on 14th October 2024.
 6. The applicant in her submissions basically reiterated the averments in her supporting affidavit to the motion and submitted that the delay in filing the Record of Appeal was occasioned by the delay in the proceedings which delay should not be visited upon her and that the respondents would not be prejudiced if the motion was allowed as the property the subject of the appeal was still intact and that further, they had been duly served with the Notice of Appeal.
 7. She further submitted that the instant application was filed on 1st October 2024, 4 days after receipt of the proceedings, which delay was not inordinate.
 8. I have carefully considered the motion, the grounds thereof, the supporting affidavit, the applicant’s submissions, the cited authorities and the law.
 9. The principles upon which this Court exercises its discretion pursuant to Rule 4 to extend time or not are now old hat. The Court has wide and unfettered discretion in deciding whether to extend time or not. However, in exercising its discretion, the Court should do so judiciously.
 10. See *Mwangi vs. Kenya Airways Limited* (2003) KLR 486 where this Court stated thus:

“Over the years, the Court has set out guidelines on what a single Judge should consider when dealing with an application for extension of time under Rule 4 of the Rules. For instance, in *Leo Sila Mutiso V Rose Hellen Wangari Mwangi* (Civil Application No. Nai 255 of 1997 (unreported), the Court expressed itself thus;

“It is now well settled that the decision whether or not to extend time for appealing is essentially discretionary. It is also well settled 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.”



11. In the instant case and as regards the length of the delay, the record shows that the impugned judgment was delivered 13th May 2024 and on the same date, the applicant applied for certified copies of the proceedings and judgment to enable her pursue an appeal. On 16th May 2024, the applicant filed a Notice of Appeal against the aforesaid judgment which was well within time.
12. It was not however until 25th September 2024, when the Court informed the applicant that the proceedings were ready for collection and she promptly filed the instant motion on 1st October 2024, a period of about 6 days after receipt of the proceedings which delay I do not consider to be inordinate.
13. Turning to reasons proffered for the delay, it was contended by the applicant that the same was principally due to delay in getting the proceedings from the Court. As I had alluded to earlier, the applicant applied for certified copies of the judgment and proceedings on the same day that the judgment was delivered i.e. on 13th May 2024. It was not until 25th September 2024 that the registry informed the applicant that the proceedings were ready for collection and there is indeed a Certificate of Delay from the Court dated 26th September 2024, evidencing the same and showing that it took the Court 132 days to prepare the proceedings and the judgment.
14. The applicant subsequently thereafter filed the instant motion on 1st October 2024, which was 6 days after receipt of copies of the judgment and the proceedings.
15. Given the circumstances, I consider the reasons given for the delay to be reasonable/plausible and ultimately therefore, I am of the considered opinion that the delay herein has been sufficiently explained.
16. As to the arguability or otherwise of the intended appeal, it would not be in my place to make definitive findings on the same sitting as a Single Judge and I will therefore not delve into the issue.
17. Finally on prejudice, I am satisfied that the respondents would suffer no prejudice if the instant motion was to be allowed as they have not even responded to the same despite having been served with a copy of the motion and they are well aware of the applicant's intention to appeal against the impugned judgment having been served with a copy of the Notice of Appeal timeously. The applicant has further contended that the suit property is still vacant with no improvements thereon, a fact that has not been controverted by the respondents.
18. The totality of my findings therefore is that the applicant has demonstrated and satisfied the principles for consideration in the exercise of my unfettered discretion pursuant to Rule 4 of this Court to extend time.
19. Accordingly, the applicant's motion dated 27th September 2024, is merited and the same is hereby allowed as prayed.
20. The applicant shall proceed to file the intended appeal within 30 days from the date of this ruling failure to which, these orders shall stand vacated.
21. The costs of this motion shall abide the outcome of the intended appeal.

It is so ordered.

DATED AND DELIVERED AT NAIROBI THIS 20TH DAY OF JUNE, 2025.

F. SICHALE

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JUDGE OF APPEAL



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

Signed

Deputy Registrar

