



REPUBLIC OF KENYA



KENYA LAW
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**Anguko v Lit & another (Criminal Application E088 of 2021)
[2025] KECA 1042 (KLR) (12 June 2025) (Ruling)**

Neutral citation: [2025] KECA 1042 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT ELDORET
CRIMINAL APPLICATION E088 OF 2021
JM MATIVO, JA
JUNE 12, 2025**

BETWEEN

MARGARET AYOMBA ANGUKO APPLICANT

AND

JAPHETH OSILU LIT 1ST RESPONDENT

MARGARET MUSARI LITABA 2ND RESPONDENT

(Being an application for extension of time within which to file and serve the record of appeal from the Judgment and/or decree of High Court of Kenya at Kitale (H. K. Chemitei, J.) dated 5th May 2020 in Succession No. 167 of 2011)

RULING

1. Vide an application dated May 25, 2021 under Rule 4, of the [Court of Appeal Rules 2010](#), the applicant mainly prays for extension of time within which to file and serve a record of appeal from the Judgment of H.K Chemitei, J. delivered on May 5, 2020 in Kitale High Court Succession No. 167 of 2011.
2. The application is premised on the grounds listed on the face of the application and the applicant's supporting affidavit sworn on May 5, 2021. The grounds in support of the application are that:-
 - (a) aggrieved by the impugned Judgment the applicant sought necessary leave to appeal against the impugned Judgment which was granted on October 27, 2020;
 - (b) pursuant to leave granted the notice of appeal dated November 2, 2020 was filed electronically in the superior court on November 3, 2020;
 - (c) the letter bespeaking certified typed proceedings and Judgment was electronically forwarded to the court on November 3, 2020;



- (d) both the notice of appeal and letter bespeaking proceeding were served upon the respondents as required on November 17, 2020;
 - (e) a certificate of delay was issued on April 22, 2021;
 - (f) the respondents will not suffer any prejudice if the instant application is allowed;
 - (g) mistakes of counsel and/or superior court in obtaining the required documents ought not be vested upon an innocent litigant seeking justice; the process of obtaining the necessary documents from the superior court was slowed down and/or contributed to by the outbreak of the Covid 19 pandemic;
 - (h) the intended appeal is arguable and has high chances of success.
3. The application is opposed vide replying affidavit sworn on June 10, 2025 by the 1st respondent. He avers that the court lacks jurisdiction to entertain the instant application because they neither sought nor obtained leave of court pursuant to section 50 (1) of the *Law of Succession Act* and Rule 39 of *Probate and Administration Rules*.
 4. The 1st respondent also avers that the notice of appeal is not properly on record since leave was granted on October 27, 2020 yet the notice of appeal was filed on November 2, 2020 which was way outside the 14 days the applicant was granted. Therefore, the notice of appeal is deemed to have been withdrawn pursuant to rule 85 of the *Court of Appeal Rules, 2010*.
 5. The deponent also averred that the record of appeal ought to have been filed within 60 days from when the certificate of delay was given. In this case it was on July 7, 2021. However, the instant application was served upon the respondents on July 12, 2021 when time had lapsed.
 6. The applicant's submissions are dated July 16, 2021, while the respondent's submissions are dated June 10, 2025.
 7. The applicant contended that she filed her notice of appeal on November 3, 2020 in the High Court at Kitale pursuant to the orders issued on October 27, 2020 which granted her leave to appeal and the said notice of appeal was served upon the respondents on November 17, 2020 despite the challenges brought by covid 19 pandemic which made court operations difficult and at times judiciary staff and even advocates were forced to work from home.
 8. It was the applicant's case that the delay in filing the record of appeal is not unreasonable hence excusable as there was no time to expressly prepare the proceedings and supply the same to the applicant since the court file was in the custody of the learned judge because there were two rulings pending delivery.
 9. It was also submitted that no prejudice will be suffered by the respondent as the 1st and 2nd houses are currently in occupation and utilized half share of the estate and the 2nd respondent has never occupied and/or utilized any part of the said estate.
 10. On the part of the respondents, counsel reiterated the contents of the replying affidavit in opposition to the application and cited the case of *Rhoda Wairimu Karanja & another v Mary Wangui Karanja & another* [2014] eKLR while submitting that the instant application is incurably defective for want of leave from the High Court this being a succession matter.
 11. I have considered the application, the affidavit in support thereto, its annexures, and the written submissions by the applicant. The only question for determination is whether the applicant has met



the threshold for the exercise of the Court's discretion to grant leave for him to file a record of appeal out of time.

12. The application is governed by Rule 4 of the *Court of Appeal Rules* which provides that:

“The Court may, on such terms as it thinks 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.”

13. It is trite that this Court has unfettered discretion under rule 4 of this Court's Rules to extend time for the doing of any act under the Court Rules. The Supreme Court of Kenya pronounced itself in the question of extension of time in the case of *Andrew Kiplagat Chemaringo v Paul Kipkorir Kibet* [2018] eKLR, and stated as follows:

“the law does not set out any minimum or maximum period of delay. All it states is that any delay should be satisfactorily explained. A plausible and satisfactory explanation for delay is the key that unlocks the court's flow of discretionary favour. There has to be valid and clear reasons, upon which discretion can be favourably exercisable.”

14. Based on the above cited decision, it is apparent that this application will be dispensed by determining whether the applicant has tendered sufficient reasons for not filing his record of appeal within the stipulated time and whether the respondents will suffer any prejudice should the application be allowed.

15. It is noteworthy that the applicant was granted leave to file the of notice appeal within 14 days and the main appeal out of time on October 27, 2020. The notice of appeal dated November 2, 2020 was lodged on November 9, 2020 which was within the 14 days as ordered by the superior court on October 27, 2020. Consequently, i find that leave was sought as required and granted by the superior court and the notice of appeal dated November 2, 2020 is properly on record.

16. Regarding delay in filing the record of appeal, the applicant attributes the delay on the covid-19 pandemic and in support of her case she has annexed a certificate of delay dated April 22, 2021 which demonstrates that the period between November 9, 2020 and March 24, 2021 should be excluded in computing the time within which the record of appeal is to be instituted. It is also noteworthy that the notice of appeal having been lodged on November 9, 2020, and the same served upon the respondents together with a letter bespeaking proceedings on November 17, 2020 during the covid - 19 pandemic, pursuant to rule 82 of the *Court of Appeal Rules, 2010* in computing the time within which the appeal is to be instituted, the period certified by the Registrar of the Superior Court in the certificate of delay dated April 22, 2021 ought to be excluded.

17. It is noteworthy that the instant application was brought on June 9, 2021, yet the proceedings were ready for collection on March 24, 2021. It is evident that there has been a delay of 15 days in bringing the instant application. Be that as it may, it is common knowledge that from mid-March 2020, all the way to the year 2021 the Covid-19 pandemic interfered with normal operations in all spheres in this country including the courts operations.



18. The Supreme Court of Kenya pronounced itself in the question of extension of time in the case of *Andrew Kiplagat Chemaringo v Paul Kipkorir Kibet* [2018] eKLR, and stated as follows:

“the law does not set out any minimum or maximum period of delay. All it states is that any delay should be satisfactorily explained. A plausible and satisfactory explanation for delay is the key that unlocks the court’s flow of discretionary favour. There has to be valid and clear reasons, upon which discretion can be favourably exercisable.”

19. The explanation proffered by the applicant on the delay to file and serve the record of appeal in light of the covid-19 pandemic is in my view plausible, satisfactory and that the delay was in the circumstances excusable and not inordinate. Consequently, I find that the applicant merits the exercise of this Court’s discretion for the above stated reasons. I accordingly allow the applicant’s notice of motion application dated May 25, 2021 on the terms that the applicant is granted extension of time to file and serve the record of appeal within thirty (30) days from the date hereof. Costs to abide by the outcome of the intended appeal.

DATED AND DELIVERED AT ELDORET THIS 12TH DAY OF JUNE, 2025.

J. MATIVO

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JUDGE OF APPEAL

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

Signed.

DEPUTY REGISTRAR

