



**Lumezani & 4 others v Lwugi (Civil Application E007 of 2025)
[2025] KECA 1061 (KLR) (12 June 2025) (Ruling)**

Neutral citation: [2025] KECA 1061 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT ELDORET
CIVIL APPLICATION E007 OF 2025
MA WARSAME, JA
JUNE 12, 2025**

BETWEEN

**NICHOLAS MWALE LUMEZANI 1ST APPLICANT
ISAAC WANYONYI FUCHAKA 2ND APPLICANT
ISAAC SIMIYU 3RD APPLICANT
PATRICK W NYONGESA 4TH APPLICANT
PATRICK MASIKA 5TH APPLICANT**

AND

ENOS ANGOYA LWUGI RESPONDENT

(An application for extension of time to file an appeal against the judgment of the Environment and Land Court of Kenya at Kitale (F. Nyagaka, J.) dated 21st November, 2023 in Civil Case No. 157 of 2017)

RULING

1. Before me is an application dated 19th July 2024, brought under Section 1A, 1B, 3, 3A, 79 and 95 of the *Civil Procedure Act* Cap 21, Order 9 Rule 9, Order 42 Rule 6 and Order 51 Rule 1 of the Civil Procedure Rules 2010.
2. The applicants seek inter alia, leave to file a notice of appeal and an appeal against the judgment in Kitale High Court Environment and Land Court Case E&L No.157 of 2017 delivered on 21st November 2023; leave for the firm of M/s Seneti and Oburu Associates Advocates to come on record on their behalf and stay of the impugned judgment.
3. The grounds, as stated on the face of the application and in the supporting affidavit sworn by Nathan Oburu, an advocate in the firm of M/s Seneti and Oburu Associates Advocates is that; he was



instructed sometime in July 2024 only for the applicants to realise that judgment had already been delivered in the matter, that the period within which they were required to file the appeal had since lapsed and that the 1st applicant who was the main player in the suit in the ELC was facing serious medical challenges coupled with old age.

4. Counsel further attributes the delay to the 2nd – 4th applicants who were not actively involved in the proceedings in the trial court and failure to communicate to them that judgment had been delivered and its outcome. He avers that the appeal has high chances of success, that if the orders sought are not granted, the appeal will be rendered nugatory since the respondent is on the verge of executing the judgment and evicting the applicants and lastly, the respondent has no known assets that the applicants can recover from in the event the appeal is successful.
5. From the outset, I must state that it is imperative for applications to this Court to be brought under the correct rules of this Court. The application before me cites provisions under the *Civil Procedure Act* Cap 21 and Civil Procedure Rules 2010, which are primarily applicable to High Court proceedings. Applications for extension of time to file appeals are governed by Rule 4 of the Court of Appeal Rules, 2022.
6. Nonetheless, I have considered the application and the affidavit on record. In considering an application of this nature under rule 4 of this Court's Rules, a single judge exercises wide and unfettered discretion, which must however be exercised judiciously and never arbitrarily or capriciously. The Court has to take into account, among other factors, the length of the delay; the reasons for the delay; whether the intended appeal is arguable or the chances of its success if the application is allowed; and the degree of prejudice to the respondent if the application is granted. See *Leo Sila Mutiso v Rose Hellen Wangari Mwangi* [1977] eKLR.
7. The judgment in question was delivered on 21st November 2023.

The statutory period for filing the notice of appeal expired on 5th December 2023, while the appeal was to be lodged 60 days thereafter, being 28th February 2024. The applicants only filed this application on 19th July 2024, representing a delay of approximately 8 months.
8. The applicants have advanced three main reasons for the delay: first is the 1st applicant's alleged medical challenges and old age; the second is failure to communicate the delivery and contents of the judgment to the 2nd – 4th applicants; and lastly is late instruction of counsel.
9. In my view each of these reasons is deficient and unsubstantiated. No medical reports, certificates, or other credible evidence has been adduced to substantiate the 1st applicant's advanced age and his serious medical condition, the "failure to communicate" to the 2nd – 4th applicants about the judgment remains vague and fails to identify whose duty it was to communicate the outcome to these applicants and it ignores the fundamental principle that parties to litigation have a personal duty to monitor the progress of their cases and cannot delegate this responsibility entirely to others.
10. Again, the late instruction of counsel in July 2024, some 8 months after the statutory appeal period had expired, demonstrates a lack of due diligence that cannot constitute good cause. The applicants have provided no explanation for their dormancy during this critical period.
11. Lastly, the applicants have made sweeping and unsubstantiated assertions about the "high chances of success" of their intended appeal without identifying any specific grounds of appeal or demonstrating any arguable points in the trial court's judgment. The Court is not privy to the substance of the intended appeal beyond these claims.



12. The test for prospects of success requires the applicants to demonstrate that their intended appeal raises arguable points of law or fact that merit consideration by the appellate court. Mere assertions without supporting particulars are insufficient. (See *Ratilal Ramniklal Patel v Republic* [1957] EA 151.)

13. In the end therefore, I find the delay inordinate and unexplained.

The reasons advanced are neither compelling nor supported by credible evidence. This Court has consistently held that an applicant seeking extension of time must account for every day of delay and provide cogent reasons supported by credible evidence. (*Thuita Mwangi v Kenya Airways Ltd* [2003] eKLR) Accordingly, I find no merit in this application and it is hereby dismissed with costs to the respondent.

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

M. WARSAME

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JUDGE OF APPEAL

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

Signed.

DEPUTY REGISTRAR.

