



**Githuci v Ngunu & another (Civil Application E071 of 2025)
[2025] KECA 1414 (KLR) (31 July 2025) (Ruling)**

Neutral citation: [2025] KECA 1414 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NYERI
CIVIL APPLICATION E071 OF 2025
S OLE KANTAI, JA
JULY 31, 2025**

BETWEEN

DAVID MURIITHI GITHUCI APPLICANT

AND

SABINA WARUGURU NGUNU 1ST RESPONDENT

NATIONAL IRRIGATION BOARD 2ND RESPONDENT

(An application for extension of time to file and serve record of appeal out of time against the Judgment of the Environment and Land Court at Kerugoya (J.M. Mutungi, J.) delivered on 20th March, 2025 in E.L.C. Appeal Case No. E034 of 2022)

RULING

1. The applicant, David Muriithi Githuci applies by Motion under rule 4 of the Court of Appeal Rules that he be granted leave to file and serve notice of appeal out of time against the judgment of the High Court of Kenya at Kerugoya delivered on 20th March, 2025 in ELC Appeal Case No. E034 of 2022 and further that he be granted leave to file and serve record of appeal out of time. He says that he did not file notice of appeal on time and that delay was occasioned by inaction on the part of his previous counsel; that he recently instructed another lawyer to represent him; that the intended appeal raises arguable issues and is not frivolous; that no prejudice will be occasioned to the respondent if the application is allowed.
2. He says that the intended appeal raises substantial and arguable legal issues including errors in law, misapplication of evidence, jurisdictional issues and many more; that delay in filing appeal is not inordinate. He has attached to the application judgment in Kerugoya ELC Appeal No. E034 of 2022 where he was the 2nd appellant which appeal was dismissed by Mutungi, J. on 20th March, 2025, notice of appeal dated 5th May, 2025 and a letter bespeaking proceedings dated 5th May, 2025.



3. There is a replying affidavit of the 1st respondent, Sabina Waruguru Ngunu who in opposing the application says that it is frivolous, vexatious and an abuse of the process of the court; that the applicant's appeal was dismissed; that the applicant was represented by counsel when his appeal was dismissed; that the application is brought with inordinate delay; that the application should be dismissed because allowing it will make her incur more legal costs in defending the intended appeal.
4. The principles that apply in applications for leave to extend time under rule 4 of the rules of this Court are well settled as were set out in the case of *Fakir Mohamed v Joseph Mugambi & 2 Others* in Civil Application No. 33 of 2004 as follows:

“The exercise of this court’s discretion under Rule 4 has followed a well beaten path since the stricture ‘sufficient reason’ was removed by amendment in 1985. As it is unfettered, there is no limit to the number of factors the court would consider so long as they are relevant. The period of delay, the reason for the delay, (possibly) the chances of the appeal succeeding if application is granted, the degree of prejudice to the respondent if the application is granted, the effect of the delay on public administration, the importance of compliance with time limits, the resources of the parties, whether the matter raises issues of public importance – are all relevant but not exhaustive factors: See *Mutiso v Mwangi* Civil Application No. Nai. 255 of 1997 (ur), *Mwangi v Kenya Airways Limited* [2003] KLR 486, *Major Joseph Mwereri Igweta v Mulika M’Ethare and Attorney General*, Civil Application No. Nai 8/2000 (ur) and *Murai v Wainana (No. 4)* [1982] KLR 38.”

5. The applicant says that he instructed a previous lawyer to file an appeal but that an appeal was not filed; that when he established that fact he instructed his current lawyer to file an appeal but that the period for filing notice of appeal had since lapsed. I note that judgment intended to be appealed was delivered on 20th March, 2025. The application for leave to file an appeal out of time is dated 15th May, 2025, a period less than 2 months after judgment was delivered. There is no inordinate delay. The applicant says that I should not punish him for mistakes of his previous lawyer; he says that the intended appeal has high chances of success where he intends to argue legal points including the jurisdiction of the Environment and Land Court which heard his first appeal.
6. I am persuaded that the applicant meets the threshold where I should exercise my discretion in his favour. I allow the Motion. Let the applicant lodge notice of appeal within seven (7) days of today and record of appeal within thirty (30) days thereafter. Costs of the Motion will be in the intended appeal.

DATED AND DELIVERED AT NYERI THIS 31ST DAY OF JULY, 2025.

S. OLE KANTAI

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JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

