



REPUBLIC OF KENYA



KENYA LAW
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**Maitima v Muchui (Civil Application E098 of 2025)
[2025] KECA 1430 (KLR) (31 July 2025) (Ruling)**

Neutral citation: [2025] KECA 1430 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NYERI
CIVIL APPLICATION E098 OF 2025
S OLE KANTAI, JA
JULY 31, 2025**

BETWEEN

DOUGLAS MAITIMA APPLICANT

AND

JOHN MUCHUI RESPONDENT

(An application for leave to file an appeal out of time against the Judgment of the High Court at Meru (C. Kendagor, J.) delivered on 25th November, 2024 in H.C. Civil Appeal No. E226 of 2023)

RULING

1. The applicant, Douglas Maitima applies in so far as a single Judge is concerned:

“That the Honourable Court be pleased to grant the applicant leave to file an appeal out of time against the judgment in Meru High Court Civil Appeal No. E226 of 2023 delivered on 25th November, 2024.”
2. In grounds in support of the Motion and in his supporting affidavit he says that the judgment was delivered on 25th November, 2024 and that on 27th November, 2024 a Notice of Appeal was filed without his instructions; that his lawyers were unable to trace him after the said judgment had been delivered; that he visited his lawyers chambers on 20th June, 2025 when the outcome of judgment was explained to him and he decided to appeal but time for doing so had elapsed; that his intended appeal has high chances of success and that he will suffer loss if leave is not granted. He further says that his lawyers were unable to trace him because he had lost his mobile phone and he had no forwarding address. He has attached a copy of the judgment at Meru Civil Appeal No. E226 of 2023 where he had appealed against a judgment by a Magistrate Court delivered on 15th December, 2023. The Judge (Kendagor, J.) found no merit in the appeal and dismissed it.
3. I have seen draft Memorandum of Appeal where 8 grounds of appeal are set out.



4. The respondent (John Muchui) opposes the application through a replying affidavit where he says that the application is fatally defective and is an abuse of the court process; that in a ruling by Muriithi, J. delivered on 1st February, 2024 the applicant was ordered to pay him Kshs.500,000 as a condition for grant of stay of execution pending appeal but that he had not done so; that as a successful litigant he is entitled to enjoy the fruits of judgment; that the applicant has not given a valid reason for failure to file an appeal within stipulated timelines.

I have seen submissions by the applicant.

5. The principles that apply in an application for leave to extend time were well set out in *Fakir Mohamed vs. 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 vs. Mwangi* Civil Application No. Nai. 255 of 1997 (UR), *Mwangi vs. Kenya Airways Limited* [2003] KLR 486, *Major Joseph Mwereri Igweta vs. Mulika M’Ethare and Attorney General*, Civil Application No.Nai 8/2000 (UR) and *Murai vs. Wainana* (No. 4) [1982] KLR 38.”

6. The applicant says that he lost his mobile phone for a period that he does not state; that he had not given a forwarding or any address to his lawyers. I find it difficult to understand how the applicant would have no way of communicating with his lawyers, or the lawyers to reach him, in a matter that started at the Magistrate’s Court where he lost; he appealed to the High Court which appeal was dismissed. He was represented by lawyers. He does not say what steps he took to contact his lawyers from when judgment was delivered on 25th November, 2024 to 20th June, 2025 (a period of even 6 months) to find out the status of his appeal.

7. I note that judgment was delivered on 25th November, 2024. The applicant approached the High Court for orders of stay of execution and was granted a conditional stay which he did not meet at all. Which is to say that the applicant knew all along that judgment had been given against him, he approached the High Court for orders and he therefore knew that time for approaching the court was running but he did not appeal.

8. I am not persuaded by the reason given on alleged loss of mobile phone for an unstated period or lack of an address for an applicant who had been in active litigation from the magistrates’ court to the first appeal at the High Court. The applicant has not in any event explained what step, if any, he took to find out the position of his case that was being handled by his lawyers. What he says is not true at all considering that he was actively involved in the appeal at the High Court post-judgment.

9. The respondent says that he suffered serious injuries at the hands of the applicant that led to amputation of his leg and that his life has been changed completely by the injuries he suffered. I think he will be prejudiced if I exercise my discretion in favour of the applicant.

10. The application for leave to appeal out of time has no merit and I dismiss it with costs to the respondent.

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

