



**M'Turuchu v M'guatu & another (Suing as the Legal Representatives  
of the Estate of M'guatu M'Itania - Deceased) (Civil Application  
E060 of 2025) [2025] KECA 1345 (KLR) (25 July 2025) (Ruling)**

Neutral citation: [2025] KECA 1345 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NYERI  
CIVIL APPLICATION E060 OF 2025  
WK KORIR, JA  
JULY 25, 2025**

**BETWEEN**

**JOSEPHINE KAGIRI M'TURUCHU ..... APPLICANT**

**AND**

**M'WIRICHIA M'GUATU ..... 1<sup>ST</sup> RESPONDENT**

**ANASTACIA KARIMI M'IWATU ..... 2<sup>ND</sup> RESPONDENT**

**SUING AS THE LEGAL REPRESENTATIVES OF THE ESTATE OF M'GUATU  
M'ITANIA - DECEASED**

*(Being an application for leave to file and serve a record of appeal out of  
time against the judgment of the Environment and Land Court at Meru  
(C.K. Yano, J.) dated 12th July 2023 in E&LC Suit No. E003 of 2021 (OS)*

**RULING**

1. Through the notice of motion of motion dated 23<sup>rd</sup> April 2025, the applicant, Josephine Kagiri M'turuchu, is seeking enlargement of time to file and serve the record in respect of an appeal against the judgment of the Environment and Land Court ("ELC") delivered on 12<sup>th</sup> July 2023 in Case No. E003 of 2021 (OS). The reasons advanced by the applicant, through the grounds on the face of the application and her supporting affidavit, to explain the delay are that upon delivery of the judgment, the applicant's advocates filed a notice of appeal and letter bespeaking the proceedings on 18<sup>th</sup> July 2023. The proceedings were supplied on 25<sup>th</sup> July 2024, which was about 379 days later, and a certificate of delay dated 2<sup>nd</sup> October 2024 was issued to that effect. The applicant avers that she was not able to file the record since Cecerina Karoki M'Guatu, one of the legal representatives of the estate of the deceased M'Guatu M'Itania, passed away in August 2024. That it was not until 17<sup>th</sup> March 2025 that Cecerina Karoki M'Guatu was substituted by Anastacia Karimi M'Igwatu. The



applicant also deposes that should time not be enlarged, she will suffer prejudice as she will be evicted from LR No. Kiirua/Naari- Maithi/5X5 (“the suit property”) rendering her family homeless.

2. The application was not opposed, and neither had the respondents filed any submissions by the time the application was heard.
3. In the submissions dated 7<sup>th</sup> May 2025, the firm of Kiautha Arithi & Co. Advocates submitted that the delay in filing the appeal was caused by the demise of Cecerina Karoki M’Guatu, who was one of the two legal representatives of the estate of the deceased M’Guatu M’Itania in whose name the suit property is registered. According to counsel, the applicant could have only lodged the record of appeal after substitution took place on 17<sup>th</sup> March 2025, by which date the time for filing the appeal had lapsed. Counsel urged that the applicant will be prejudiced if leave is not granted and that the delay was not of her own making. Counsel referred to Rule 4 of the Court of Appeal Rules, Paul Wanjohi Mathenge vs. Duncan Gichane Mathenge [2013] KECA 199 (KLR) and Nicholas Kiptoo Arap Korir Salat vs. Independent Electoral and Boundaries Commission & 7 Others [2014] eKLR to point out the principles underpinning applications for enlargement of time. Finally, counsel submitted that the applicant promptly sought enlargement of time and urged that the respondents will not be prejudiced should the application be allowed.
4. The principles guiding the exercise of the discretion for enlargement of time under rule 4 of the Court of Appeal Rules were outlined by the Supreme Court in Nicholas Kiptoo Arap Korir Salat vs. Independent Electoral and Boundaries Commission & 7 Others (supra) as follows:

“This being the first case in which this Court is called upon to consider the principles for extension of time, we derive the following as the under-lying principles that a Court should consider in exercise of such discretion:

1. Extension of time is not a right of a party. It is an equitable remedy that is only available to a deserving party at the discretion of the Court;
  2. A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the court;
  3. Whether the court should exercise the discretion to extend time, is a consideration to be made on a case to case basis;
  4. Whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the Court;
  5. Whether there will be any prejudice suffered by the respondents if the extension is granted;
  6. Whether the application has been brought without undue delay; and
  7. Whether in certain cases, like election petitions, public interest should be a consideration for extending time.”
5. Guided by the above principles, I have reviewed the application as well as submissions by counsel. In my view, the issues for determination are whether the delay in filing the appeal has been satisfactorily explained and whether the respondents will be prejudiced should time be enlarged.
  6. The judgment was delivered by C.K. Yano, J. on 12<sup>th</sup> July 2023, and the notice of appeal was filed on 18<sup>th</sup> July 2023. A certificate of delay was issued by the deputy registrar of the trial court confirming that the proceedings were supplied to the applicant on 25<sup>th</sup> July 2024. The present application is



dated 23<sup>rd</sup> April 2025, and the applicant is therefore required to explain the delay of approximately 9 months between the time the certificate of delay was issued and the date the application was filed. The explanation is that Cecirina Karoki M'Guatu, who was one of the administrators of the estate of the deceased M'Guatu M'Itania passed away in August 2024 and it was not until 17<sup>th</sup> March 2025 that an order was issued to substitute her with Anastacia Karimi M'Igwatu. I find the reason advanced for the delay satisfactory. Upon the demise of one of the administrators of the estate of the deceased M'Guatu M'Itania, substitution was necessary before any other action could be taken. The time it took to obtain an order of substitution was beyond the control of the applicant and is excusable. Additionally, I do not find the further delay between 17<sup>th</sup> March 2025 and 23<sup>rd</sup> April 2025 when the application was filed inordinate.

7. The second issue relates to whether any of the parties will be prejudiced should the application be allowed. The applicant contends that if time is not enlarged, she will be evicted from the suit property, rendering her homeless. Without a counter-argument to this, I find the alleged prejudice plausible.
8. Consequently, I find the notice of motion dated 23<sup>rd</sup> April 2025 merited and allow it. The applicant shall file and serve the record of appeal within 30 days from the date of the delivery of this ruling. Noting that the respondents did not reply to the application, I make no order as to costs.

**DATED AND DELIVERED AT NYERI THIS 25<sup>TH</sup> DAY OF JULY, 2025.**

**W. KORIR**

.....

**JUDGE OF APPEAL**

I certify that this is a True copy of the original

Signed

**DEPUTY REGISTRAR**

