



**Kariuki v Watuthu (Civil Application E085 of 2025)
[2025] KECA 1341 (KLR) (18 July 2025) (Ruling)**

Neutral citation: [2025] KECA 1341 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NYERI
CIVIL APPLICATION E085 OF 2025
S OLE KANTAI, JA
JULY 18, 2025**

BETWEEN

ANTHONY KARIUKI APPLICANT

AND

SAMSON MUTHAMI WATUTHU RESPONDENT

(An application for leave to file and serve the Notice and Record of Appeal out of time against the Judgment and Decree of the Environment and Land Court at Nyeri (K. Bor, J.) delivered on 15th November, 2023 in E.L.C. Case No. 12 of 2021)

RULING

1. I am asked in the Motion on Notice brought under various provisions of law including rule 4 of the Court of Appeal Rules to grant the applicant leave to file and serve Notice of Appeal and Record of Appeal out of time against the judgment of Bor, J. delivered on 15th November, 2023 in Nanyuki ELCC No. 12 of 2025. In grounds in support of the application and in a supporting affidavit of the applicant Anthony Kariuki he says amongst other things that he was not informed or notified by his then lawyer when judgment was delivered; that delay in filing notice of appeal on time is not inadvertent (sic) but excusable "... and cannot be visited on the applicant."; that due to lapse of time leave is necessary to enable the applicant file notice of appeal and record of appeal. Further, that it is the applicant who filed suit being Nyeri ELC No. 329 of 2014 claiming injunction, eviction, general damages and other prayers which was transferred to Nanyuki; that his previous lawyers did not inform him when judgment was delivered thus he could not lodge notice of appeal on time. He says that he has an arguable appeal; that no prejudice will be occasioned to the respondent if leave is granted and that it is in the interest of justice that leave applied for be granted. Attached to the application is a copy of the impugned judgment, an undated notice of appeal and a draft Memorandum of Appeal where 6 grounds of appeal are set out.



2. I have not seen any replying affidavit but I have seen hearing notice served on the parties on 7th June, 2025 where parties were notified of the hearing date and required to file written submissions. I have not seen any from either side.
3. The principles that apply in an application for leave to file an appeal out of time were set out in the oft-cited case of *Fakir Mohamed vs. Joseph Mugambi & 2 Others* in Civil Application No. 33 of 2004 analyzed factors to be the following:

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.”

4. The judgment intended to be appealed was delivered on 15th January, 2023. The application before me is dated 30th May, 2025, a period of over 18 months after judgment. The applicant says in what I consider a casual way that he was not advised by previous lawyers that judgment had been delivered. He does not say who they were. He does not tell me what efforts, if any, he made to follow up on the case after it had been heard and concluded. He does not even tell me when he decided to engage other lawyers or whether those new lawyers are properly on record to act for him.
5. I consider a delay of over 18 months to be inordinate delay and I am not persuaded by the reasons for delay.
6. I have not been shown that the intended appeal has chances of success.
7. Looking at the judgment of Bor, J who found that the respondent is in possession I think that the respondent would be prejudiced if I exercised discretion in favour of the applicant.
8. This is not a suitable case for me to exercise discretion in favour of the applicant and being of that view the Motion fails and I dismiss it with no order on costs.

DATED AND DELIVERED AT NYERI THIS 18TH 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

