



**Muriithi & another (Suing as Administrators of the Estate of Monica Wangeci Muriithi - Deceased) v Car & General (Trading) Limited & another (Civil Application E403 of 2024) [2025] KECA 1303 (KLR) (18 July 2025) (Ruling)**

Neutral citation: [2025] KECA 1303 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAIROBI  
CIVIL APPLICATION E403 OF 2024  
F TUIYOTT, JA  
JULY 18, 2025**

**BETWEEN**

**MARION WAIRIMU MURIITHI ..... 1<sup>ST</sup> APPLICANT  
VIRGINIA WACHEKE MURIITHI ..... 2<sup>ND</sup> APPLICANT  
SUING AS ADMINISTRATORS OF THE ESTATE OF MONICA WANGECI  
MURIITHI - DECEASED**

**AND**

**CAR & GENERAL (TRADING) LIMITED ..... 1<sup>ST</sup> RESPONDENT  
PETER NJERU ..... 2<sup>ND</sup> RESPONDENT**

*(Being an application for extension of time to file an Appeal out of time from the judgment of the High Court of Kenya at Nairobi (Jesse Njagi, J.) dated 12th April, 2024 in Civil Appeal No. 71 of 2021)*

**RULING**

1. Before me is a notice of motion dated 7<sup>th</sup> August, 2024 in which the applicants seek the leave of this Court to lodge the notice of appeal dated 11<sup>th</sup> June, 2024 out of time against the decision of Njagi, J. delivered on 12<sup>th</sup> April, 2024 in Civil Appeal No. 71 of 2024.
2. In support of the application is the affidavit of Marion Wairimu Muriithi, one of the applicants and administratrix of the Estate of the Late Monica Wangeci Muriithi, sworn on even date. She deposes that the reason for delay in filing the notice of appeal was as a result of giving instructions late to her advocate on record. She avers that she lost her mobile phone through theft and all the contacts including her advocate's contact were lost and so her advocate was unable to contact her in good time. She laments that, because of her old age and financial constraints, it took her some time to visit the advocates office.



Further, that she bears the financial burden of looking after her grandchildren after her daughter passed on. She pleads with this Court to grant her application as she is an active, willing and interested litigant and has filed this application without any undue delay and the same will not occasion any prejudice to the respondents.

3. The 1<sup>st</sup> respondent has opposed the application through the Replying Affidavit of Esther Mucina, a legal officer at the 1<sup>st</sup> Respondent sworn on 21<sup>st</sup> August, 2024. She contends that counsel for the applicants was present in court when the impugned judgment was delivered on 12<sup>th</sup> April, 2024 and despite alleging that the Judge only read the last part of the judgment allowing the appeal, the same was not true and in fact the learned Judge expounded on the reasons why the appeal was allowed. Further, that a copy of the judgment was uploaded to the judiciary e-filing portal on 26<sup>th</sup> April, 2024 and the applicants made a request for certified copies of the judgment and proceedings on 12<sup>th</sup> June, 2024 via a letter dated 10<sup>th</sup> June, 2024. Contended, further, is that the applicants took two months after judgment was delivered to move the Court below for certified copies of judgment and proceedings and to file a notice of appeal. The respondents state that a copy of the notice of appeal was never served upon their advocates. She urges this court not to deem the notice of appeal as duly filed as not only is it filed out of time but the same does not conform to the rules of this Court as it is not executed by the Registrar/ Deputy Registrar of the High Court and was never served upon the respondents. It is also argued; that it took two months from the date of judgment for the applicants to make a request for judgment and proceedings; that the instructions to lodge an appeal were given in August 2024 which was two months after the notice of appeal was already filed; that the applicants have taken four months after the lapse of the stipulated timelines to file an application seeking to file the same out of time with no sufficient reasons; and that the applicants have not made any averment that the intended appeal has prospects of success.
4. The two parties have filed submissions in support of their respective positions, expounding on the arguments raised in the affidavits. The 2<sup>nd</sup> respondent has neither opposed nor supported the application.
5. Rule 4 of the Court of Appeal Rules, 2022 gives this Court the discretion to extend time prescribed by the Rules or order of Court. Although unfettered, this discretion is guided by well settled principles. These are: the length of the delay; the reasons for the delay; (possibly) the chances of the appeal succeeding if the application is granted; and the degree of prejudice to the respondent if the application is granted. See *Leo Sila Mutiso v Rose Hellen Wangari Mwangi – Civil Application No. Nai 251 of 1997*.
6. Rule 77 requires that a notice of appeal ought to be filed within 14 days of the date of the decision it intended to appeal against. The impugned decision was delivered on 12<sup>th</sup> April, 2024 and so the notice of appeal ought to have been filed on or before 26<sup>th</sup> April, 2024. It is common ground that the applicant filed the notice of appeal late (on either 11<sup>th</sup> or 12<sup>th</sup> June, 2024), about two months late. Two other issues arise with this notice of appeal; as rightfully noted by the 1<sup>st</sup> respondent, it is not signed by the Deputy Registrar of the High Court nor stamped by the registry as being lodged; and it is not served upon the respondents. Yet nothing much turns on the formality of the notice as the 1<sup>st</sup> Respondent concedes that it was indeed filed, albeit late.
7. The reasons for delay raised by the applicant are simple: that she lost her phone through theft and her contacts, including that of her counsel on record, were lost; that being old and frail it took her time to get to her counsel's office; and that she is facing financial constraints after her daughter passed away and left to care for her grandchildren.



- 8. The delay of less than two (2) months to file the notice and another two (2) months to bring this application is not so inordinate and I am inclined to excuse it. In doing so, I have considered that the respondents neither allege nor demonstrate that they will suffer prejudice should the application be granted.
- 9. The application dated 7<sup>th</sup> August, 2024 is allowed. The applicant shall within fourteen (14) days hereof file and serve a fresh notice of appeal and thereafter, within sixty (60) days of filing and serving the notice of appeal, file and serve the record of appeal. Costs of this application shall be in the intended appeal.

**DATED AND DELIVERED AT NAIROBI THIS 18<sup>TH</sup> DAY OF JULY 2025.**

**F. TUIYOTT**

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**JUDGE OF APPEAL**

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

Signed

**DEPUTY REGISTRAR.**

