



REPUBLIC OF KENYA



**Kenya Railways Corporation v Kagwi & 7 others (Civil Application
E058 of 2025) [2025] KECA 1346 (KLR) (14 July 2025) (Ruling)**

Neutral citation: [2025] KECA 1346 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NYERI
CIVIL APPLICATION E058 OF 2025
W KARANJA, JA
JULY 14, 2025**

BETWEEN

KENYA RAILWAYS CORPORATION APPLICANT

AND

PATRICK THUO KAGWI 1ST RESPONDENT

JOHN KIRINA MUCHAI 2ND RESPONDENT

DANIEL THUMBI MWANGI 3RD RESPONDENT

JANE BETTY NYAMBURA MACHARIA 4TH RESPONDENT

CHRISTOPHER MWANGI E GITAU 5TH RESPONDENT

JOSEPH NJENDU KIMANI 6TH RESPONDENT

LAND REGISTRAR MURANG'A 7TH RESPONDENT

MURANG'A COUNTY GOVERNMENT 8TH RESPONDENT

RULING

1. Kenya Railways Corporation (the applicant), has moved this Court pursuant to Rule 4 of the Court of Appeal Rules, seeking extension of time within which to file and serve a Notice of appeal.
2. On 11th February 2015, the Environment and Land Court (ELC) (L.N. Gacheru, J.) rendered a judgment in ELC Case No. E019 of 2020 in favour of the respondents herein as against the applicant.
3. Aggrieved by the judgment, the applicant instructed its advocates to file an appeal but the Notice of appeal was filed on 28th February 2025, rendering it out of time by 3 days.
4. In the grounds on the face of the application and the averments in the supporting affidavit of Philip J. Mainga, the applicant's managing director, the applicant maintains that the delay involved is not



inordinate and, further, that the same was caused by an oversight by their advocates. Mr. Mainga deposes that the applicant will be greatly prejudiced if not allowed to pursue its appeal because it stands to lose its proprietary interests in its parcels of land which the court awarded to the respondents. He beseeches the Court to allow the applicant exercise its right of appeal and that it will be in the interest of justice for the Court to allow the application.

5. The application is opposed through the affidavit of Winnie Mwara, learned counsel on record for the respondents. She deposes that the delay has neither been explained, not justified, and the application is purely meant to delay the matter further. Learned counsel urges the Court to dismiss the application.

1. Parties have not filed submissions in this matter. I have considered the application along with the rival affidavits. Rule 4 of this Court's Rules clothes the Court with unfettered discretion to grant or deny extension of time. The principles to be considered by the Court in order to determine whether to grant extension of time or not are settled and need no rehashing. It is settled that for an application for extension of time to succeed, several factors have to be considered. This Court has set the parameters in several decided cases and so has the Supreme Court. For instance, in *Paul Wanjohi Methane v Duncan Gichane Mathenge* [2013] eKLR this Court stated: -

“The discretion under rule 4 is unfettered, but it has to be exercised judicially, not on whim, sympathy or caprice. I take note that in exercising my discretion I ought to be guided by consideration of the factors stated in previous decisions of this Court including, but not limited to, the period of delay, the reasons for the delay, the degree of prejudice to the respondent and interested parties if the application is granted, and whether the matter raises issues of public importance.”

See also the Supreme Court decision in *Nicholas Kiptoo Korir Arap Salat v IEBC* [2014] eKLR.

6. In this case, I note that the delay involved was only 3 days. In my view, this cannot be said to be inordinate at all. The reason given is that there was oversight on the part of counsel. The fact that the applicant filed a Notice of appeal, albeit out of time, only 3 days late, in my view demonstrates that the applicant was not indolent and was keen on pursuing an appeal against the decision impugned. In view of the short delay and the gravity of the matter, and the fact that the respondent has not demonstrated that it will suffer any prejudice if the application for extension of time is allowed, I am minded to exercise my discretion in the applicant's favour. Accordingly, I allow the application and order that the Notice of appeal dated 28th February 2025 be and is hereby deemed as having been filed within time, the same be served on the respondents within 7 days from the date hereof; that cost of the application abide the result of the intended appeal.

DATED AND DELIVERED AT NYERI THIS 14TH DAY OF JULY 2025.

W. KARANJA

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JUDGE OF APPEAL

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

SIGNED DEPUTY REGISTRAR

