



**State Law Office v Kibira (Civil Application E546 of 2024)  
[2025] KECA 1307 (KLR) (18 July 2025) (Ruling)**

Neutral citation: [2025] KECA 1307 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAIROBI  
CIVIL APPLICATION E546 OF 2024**

**JM NGUGI, JA**

**JULY 18, 2025**

**BETWEEN**

**STATE LAW OFFICE ..... APPLICANT**

**AND**

**GRACE WAMBUI KIBIRA ..... RESPONDENT**

*(Being an Application for leave to file an appeal out of time against  
the Judgment of the Environment & Land Court at Nairobi, (Mogeni,  
J.) dated 22nd November, 2023 in ELC Case No. 1433 of 2014)*

**RULING**

1. Before the Court is the Applicant’s motion dated 24<sup>th</sup> October, 2024. It expressed to have been brought under “Rule 4 and 77(2) of the Court of Appeal Rules and section 79G respectively of the Civil Procedure Act .....; Order 42 and Order 51(1) of the Civil Procedure Rules....”. It contains the following prayers:
  1. That the Honourable Court be pleased to grant the Applicant leave to file an appeal out of time against the judgment of Hon. Lady Justice J. Mogeni delivered on 22<sup>nd</sup> November 2023 in Nairobi – ELC No. 1433 of 2014.
  2. That pending the hearing and determination of this application there be stay of execution of the said judgment and subsequent orders that is subject of the leave sought herein and or in the alternative *status quo* be maintained.
  3. That this Honourable Court be pleased to grant temporary stay of execution orders in terms of prayer (2) above pending the hearing and determination of this application inter parties and/ or further orders of this court.
  4. That such other orders be made as this court may deem fit.



5. That the costs of this application be provided for.
2. It is grounded on the reasons listed on its face and is supported by the affidavit of Shadrack Kinga, a Special State Counsel in the Ministry of Defence deposed on 24<sup>th</sup> October, 2024.
3. The application is opposed through the replying affidavit of Kimamo Muchiri, counsel on record for the respondent. It is dated 8<sup>th</sup> November, 2024.
4. The application was canvassed by way of written submissions. The applicant filed theirs dated 10<sup>th</sup> July, 2025 while those of the respondents are dated 14<sup>th</sup> July, 2024.
5. At the outset, it behoves me to point out that this is the kind of omnibus applications which the practice of this Court discourages. It includes its foundational prayer – for extension of time – which must be heard by a single judge under Rule 4 of the *Court of Appeal Rules* as well as prayers for stay which are improperly grounded on the *Civil Procedure Act* and *Rules* instead of Rule 5(2)(b) of the *Court of Appeal Rules*. The latter prayers must be heard by a full bench of no less than three judges. In the interest of justice, I will proceed to consider only the prayer for extension of time.
6. The background to the application is as follows. On 22<sup>nd</sup> November, 2023, the Environment and Land Court sitting in Nairobi entered final judgments in favour of the respondent in a suit in which the respondent had sought compensation for demolition of her buildings on the parcel of land known as LR 209/7259/217. The Ministry of Defence had ordered the buildings demolished on the grounds that they were within the flight path of Moi Airbase; and that they had been built in violation of *International Civil Authority Organization Regulations*; the Kenya *Civil Aviation Act* and the *Physical Planning Act*. The Ministry of Defence also claimed that the respondent had ignored an enforcement notice from the then City Council of Nairobi.
7. The applicant timeously filed a Notice of Appeal dated 29<sup>th</sup> November, 2023. It also requested for certified copies of the proceedings and copied the letter to the respondent’s counsel under Rule 82(1) of the *Court of Appeal Rules*. A Certificate of Delay of Proceedings was duly issued by the Deputy Registrar. It is dated 4<sup>th</sup> April, 2024. Under Rule 84 of the *Court of Appeal Rules*, this would have afforded the applicant sixty (60) days from that date to file its record of appeal. This is because the effect of the letter bespeaking proceedings which is copied to the other side in the litigation has the effect of tolling the time counted towards the statutory period within which the appeal must be filed.
8. The applicant did not meet the statutory timelines. The sixty- day statutory period expired around 4<sup>th</sup> June, 2024. The applicant explains that while the legal counsel who handled the matter at the Attorney General’s Office wrote immediately to the Principal Secretary in the Ministry of Defence advising them of the outcome of the litigation at the High Court, it was not until September that the Ministry requested for the full file for review, and then gave instructions shortly thereafter to bring the present application.
9. The applicant argues that the delay in filing the appeal and bringing this application is excusable; and was not intentional but was caused by the need for “extensive consultations and the nature of the case, which has far reaching implications on aviation safety and national security.” Through a Draft Memorandum of Appeal, the applicant has sought to demonstrate the weighty national security and aviation safety issues it wishes to press on appeal. The applicant argues that the fact that it filed and served the Notice of Appeal within the prescribed timelines demonstrates its desire and seriousness in pursuing the appeal. It places reliance on *Andrew Kiplagat Chemaringo v Paul Kipkorir Kibet* [2018] eKLR.



10. On the other hand, the respondent argues that this case is nothing more than that of two neighbours who own properties near each other but one of them feels they have superior rights and interests over their neighbour. The respondent is persuaded that the appeal is inarguable – in part because, she argues, she was able to demonstrate to the trial court that she had obtained the consent of the defunct Nairobi City Council before constructing on her land. The respondent cites *Ngoso General Contractors Ltd v Jacob Gichunge* [2005] eKLR for the correct proposition that an applicant for extension of time should demonstrate that the intended appeal is not frivolous; otherwise the extension of time becomes a futile exercise.
11. The respondent also argues that the applicant has no good reason for not lodging the appeal on time; and finds the delay inexcusable, unexplained and inordinate. The respondent cites *Mwaniki Gachoka & Another v City Council of Nairobi* [2000] eKLR in this regard.
12. Finally, the respondent says that she will suffer prejudice if the application is allowed because she had legitimate expectation that the matter had come to an end. Her prejudice, she says, will be extreme given that she is quite elderly at 94 years of age.
13. I have considered the application, the grounds in support thereof, the replying affidavit, the rival arguments by the parties in their respective submissions, and the law. The singular issue for determination is whether the Court should, in the circumstances of this case, exercise its discretion to enlarge time within which the applicant can file an appeal.
14. The discretion that I am called to exercise in the determination of this application is provided under Rule 4 of the *Court of Appeal Rules*. The Rule provides as follows:

“The court may, on such terms as it thinks just, by order extend the time limited by these Rules, or by any decision of the Court or of a superior court, for the doing of any act authorized or required by these Rules, whether before or after the doing of the act, and a reference in these Rules to any such time shall be construed as a reference to that time as extended.”
15. Whereas this Rule does not list the factors the court ought to consider in an application for extension of time, the courts have devised appropriate principles to be applied in achieving a ‘just’ decision in the circumstances of each case. A case in point is *Leo Sila Mutiso v Hellen Wangari Mwangi* [1999] 2 EA 231 which laid down the parameters as follows:

“It is now well settled that the decision whether or not to extend the time for appealing is essentially discretionary. It is also well settled that in general the matters which this Court takes into account in deciding whether to grant an extension of time are: first the length of the delay, secondly, the reason for the delay; thirdly (possibly) the chances of the appeal succeeding if the application is granted; and, fourthly, the degree of prejudice to the respondent if the application is granted.”
16. In the present case, the delay in filing the appeal is approximately four months. While this is a considerable period, it is not so inordinate as to be automatically disqualifying. The delay has been attributed to the time required for consultations between the Office of the Attorney General and the relevant line ministry. Although this explanation is not particularly compelling, I am not persuaded that it amounts to inexcusable neglect or was motivated by bad faith.
17. The applicant’s position before the trial court was that the demolition of the respondent’s structures was necessitated by compliance with aviation safety regulations. The applicant now argues that the



learned Judge erred in law by elevating private property rights without due regard to overriding public interests in aviation safety. This raises weighty constitutional and regulatory questions that warrant judicial scrutiny on appeal.

18. Importantly, aside from the acknowledged delay in prosecuting the appeal, the respondent has not demonstrated any specific prejudice that would result from the grant of this application. The relatively advanced age of the respondent can be accommodated by requesting for an expedited hearing of the substantive appeal. In the circumstances, I am satisfied that the interests of justice would be better served by allowing the matter to proceed to appellate determination.
19. Accordingly, I allow the application dated 24<sup>th</sup> October, 2024 in terms of prayer 1 only. The applicant shall have leave to file and serve a Record of Appeal within fourteen (14) days of today. Costs of this application shall abide the outcome of the appeal.
20. Orders accordingly.

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

**JOEL NGUGI**

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**JUDGE OF APPEAL**

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

Signed

DEPUTY REGISTRAR

