



REPUBLIC OF KENYA



**Shikunzi v Zarembka & another (Civil Application  
E509 of 2024) [2025] KECA 1315 (KLR) (18 July 2025) (Ruling)**

Neutral citation: [2025] KECA 1315 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAIROBI  
CIVIL APPLICATION E509 OF 2024  
DK MUSINGA, JA  
JULY 18, 2025**

**BETWEEN**

**DOUGLAS MBALA SHIKUNZI ..... APPLICANT**

**AND**

**JOY MUTANI ZAREMBKA ..... 1<sup>ST</sup> RESPONDENT**

**THOMAS MUTINDI ZAREMBKA ..... 2<sup>ND</sup> RESPONDENT**

*(Being an application for extension of time to serve a notice of appeal  
out of time against the ruling of the High Court of Kenya at Nairobi  
(Riechi, J.) delivered on 7th August 2024 in Comm Suit No. E493 of 2022)*

**RULING**

1. The applicant's notice of motion dated 7<sup>th</sup> October 2024 seeks leave to file a notice of appeal out of time from the ruling of the Riechi, J. in Succession Cause No. E543 of 2022 delivered on 7<sup>th</sup> August 2024.
2. The application is supported by an affidavit sworn by Naburuki Joan, an advocate practicing in the firm of Wanyoike & Partners Advocates who are on record for the applicant. He states that he was not served with the notice of delivery of the ruling; that the applicant learnt about the ruling on 28<sup>th</sup> September 2024 through the Kenya Law Reports online platform and by that time the statutory period for filing a notice of appeal had already lapsed.
3. The applicant's counsel further states that the applicant has a good appeal with overwhelming chances of success, and that the respondents will not suffer any prejudice if the application is allowed.
4. The application is opposed by the respondents. In an affidavit sworn by the 1<sup>st</sup> respondent, she states, inter alia, that the application is fatally defective because the applicant's advocate has deponed to contested matters in place of her client; that the application is made under the wrong provisions of



- the law; that the application is making reference to a non-existent judgment; and that the applicant captures the names of the parties wrongly.
5. Regarding the delivery of the impugned ruling, the 1<sup>st</sup> respondent argues that after the hearing of the application the trial judge reserved the ruling on 25<sup>th</sup> July 2024, but on that day it was deferred to be delivered on notice; that the ruling was eventually delivered on 7<sup>th</sup> August 2024 as notified in judiciary e-filing portal; that at the time the applicant was represented by Jackline Peris Bonyo Advocate of J.P. Bonyo & Co. Advocates, who ought to have taken the necessary steps to follow up on the delivery of the ruling; that with e-filing judiciary portal, parties to a case and all their advocates are notified of all the goings on in all cases, including the delivery of rulings, and therefore the applicant's advocates must have received an email or a notice on the e-filing portal regarding delivery of the ruling.
  6. The 1<sup>st</sup> respondent further states, on the advice of her advocate, that decisions of the court are now uploaded on the e-filing judiciary portal immediately after they are delivered and parties can access them immediately thereafter; that if the applicant was keen and exercised due diligence, he would have known of the delivery on 7<sup>th</sup> August 2024; that the delay of 62 days between the date of delivery of the ruling and 7<sup>th</sup> October 2024 when the application was made is inordinate, unreasonable, and demonstrates lack of diligence on the part of the applicant.
  7. Furthermore, the 1<sup>st</sup> respondent contends, the draft memorandum of appeal does not raise any arguable points;  
that the respondents will be prejudiced if this application is allowed as it will delay the finalization of the dispute; and that it is in the interest of justice that litigation comes to an end. For those reasons, they urged this Court to dismiss the application.
  8. This application came up for hearing on 9<sup>th</sup> July 2025 and as directed by this Court's Registrar, the application was canvassed by way of written submissions only, without appearance by counsel.
  9. I have considered the application, the affidavits in response, as well as the submissions and list of authorities filed by parties. It is not in dispute that the impugned ruling was delivered on 7<sup>th</sup> August 2024, and under the Rules of this Court, the notice of appeal ought to have been filed within 14 days from the date of delivery of the impugned Ruling. That period expired on 21<sup>st</sup> August 2024. The application was therefore made 47 days outside the period specified under this *Court's Rules*.
  10. The factors that guide this Court in an application for extension of time are well settled. They have been restated in many decisions of this Court, among them, *Paul Musili Wambua vs Attorney General & 2 Others* [2015] eKLR.
  11. In an application of this nature the judge exercises unfettered discretion, but in the exercise of that discretion the Court has to consider the length of the delay, the reasons for the delay, the chances of the appeal succeeding if the application is granted, the degree of prejudice to the respondent if the application is granted, and any other relevant factor.
  12. I will disregard the technical arguments raised by the 1<sup>st</sup> respondent in objection to the application such as reference to a judgment instead of a ruling and the fact that the supporting affidavit to the application is sworn by the applicant's advocate and not by the applicant himself. This is because I do not think that much turns on those arguments. There are no serious contested facts that have been deponed to by the applicant's advocate and I believe it is in the interest of justice that this application be determined on its merits.
  13. The period of delay in filing the application is about 47 days, which in my view, is not inordinate. Regarding the reason for the delay, although the applicant says that there was no notice of delivery of



the ruling, I agree with the respondent that the date was posted on the court's e-filing portal, and if the applicant's counsel was diligent, she ought to have seen it in good time, although it also depends on when the portal was updated. That notwithstanding, had the ruling been delivered on its due date, there would have been no excuse if the applicant's counsel failed to attend court on the specific date or take appropriate action within the stipulated period of time. In my view, therefore, the delay, which is not inordinate, has been well explained.

14. Regarding the chances of success of the intended appeal, having perused the impugned ruling and the memorandum of appeal, I will not say that the intended appeal is frivolous. It is arguable, and whereas it is in the interest of justice that litigation comes to an end, a party who reasonably wishes to exercise his/her constitutional right of appeal should not be denied that right except for good reasons.

15. All in all, I am satisfied that this application is meritorious.

I grant leave as sought and direct that the appeal be filed and served within 14 days from the date hereof. The costs of the application shall be in the appeal.

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

**D. K. MUSINGA (PRESIDENT)**

.....

**JUDGE OF APPEAL**

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

Signed

**DEPUTY REGISTRAR.**

