



**Crawford Capital Ltd v Ogelo & 2 others (Civil Application  
E057 of 2024) [2025] KECA 1281 (KLR) (11 July 2025) (Ruling)**

Neutral citation: [2025] KECA 1281 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT ELDORET  
CIVIL APPLICATION E057 OF 2024**

**WK KORIR, JA**

**JULY 11, 2025**

**BETWEEN**

**CRAWFORD CAPITAL LTD ..... APPLICANT**

**AND**

**KENNEDY OMONDI OGELO ..... 1<sup>ST</sup> RESPONDENT**

**KENYA PIPELINE CO. LTD ..... 2<sup>ND</sup> RESPONDENT**

**KENYA REVENUE AUTHORITY ..... 3<sup>RD</sup> RESPONDENT**

*(Being an application for leave to file an appeal out of time against the ruling of the High Court of Kenya at Eldoret (R. Nyakundi, J.) dated 3rd May 2024 in HCCC No. E007 of 2024)*

**RULING**

1. In the notice of motion dated 6<sup>th</sup> November 2024, the applicant seeks leave of the Court to file an appeal out of time and that if leave is granted, the record of appeal annexed to the application be deemed as duly filed upon payment of the requisite court fees.
2. The application, which is supported by the affidavit of Brian K. Kipruto, is on the grounds that despite filing the notice of appeal in time, the same was not served upon the respondents because the suit before the trial court was mistakenly marked as settled and the case closed in the Judiciary Case Tracking System (CTS) portal. As a result, counsel for the applicant mistakenly believed that the 1<sup>st</sup> respondent had abandoned the suit, only for the 1<sup>st</sup> respondent to serve its advocates with a supplementary affidavit in the matter on 29<sup>th</sup> October 2024, hence necessitating the present application. The applicant avers that the intended appeal is arguable and it is in the interest of justice that the application be allowed.
3. The 1<sup>st</sup> respondent swore a replying affidavit on 16<sup>th</sup> January 2025 in opposition to the application. He avers that the applicant is guilty of indolence and that since the notice of appeal was not served, the same is invalid and cannot be the basis for an application for extension of the time for filing an appeal.



He also faults the applicant for failing to provide the addresses of the respondents. The 1<sup>st</sup> respondent further avers that he will be prejudiced in the event the time is enlarged, as the applicant will continue to collect levies despite the levies having been waived by the South Sudan Revenue Authority through the letter dated 5<sup>th</sup> October 2024.

4. When this application came up for hearing on 7<sup>th</sup> May 2025, only counsel for the 1<sup>st</sup> respondent had filed submissions for consideration by the Court. In the submissions filed by Apollo & Co. Advocates, the 1<sup>st</sup> respondent urges that the application is ripe for dismissal on account of failure to serve the notice of appeal and failure to include the respondents' address of service. Counsel referred to *Salat v Independent Electoral and Boundaries Commission & 7 others* [2014] KESC 12 (KLR) to identify the principles guiding the grant of an order for extension of time, and *Wanjobi Mathane v Duncan Gichare Mathenge* [2013] eKLR to warn that the exercise of discretion under rule 4 of the *Court of Appeal Rules* must not be on whim, sympathy or caprice.
5. I have given due consideration to the application, the response and the submissions of the 1<sup>st</sup> respondent. The principles guiding the exercise of discretion under rule 4 of the Court of Appeal Rules were expressed by the Supreme Court in *Salat v Independent Electoral and Boundaries Commission & 7 Others* (*supra*) as follows:

“This being the first case in which this Court is called upon to consider the principles for extension of time, we derive the following as the under-lying principles that a Court should consider in exercise of such discretion:

1. Extension of time is not a right of a party. It is an equitable remedy that is only available to a deserving party at the discretion of the Court;
  2. A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the court;
  3. Whether the court should exercise the discretion to extend time, is a consideration to be made on a case to case basis;
  4. Whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the Court;
  5. Whether there will be any prejudice suffered by the respondents if the extension is granted;
  6. Whether the application has been brought without undue delay; and
  7. Whether in certain cases, like election petitions, public interest should be a consideration for extending time.”
6. The list is not exhaustive and not all the factors listed therein must be considered in every case. Thus, as earlier held by this Court in *Margaret Muthoni Muchiga v Esther Kamori Gichobi* [2010] KECA 42 (KLR):

Although there is no limit to the number of factors available for consideration so long as they are relevant, there is no requirement that all these factors be considered in any application. The facts and circumstances of each application will normally dictate the exercise of the Court's discretion...”



7. In my view, this application turns on the resolution of the question whether the delay has been satisfactorily explained and whether should leave be granted the respondent will be prejudiced. Before delving into the substance of this application, I must state that the 1<sup>st</sup> respondent's contention that the notice of appeal on record is not valid due to non-service is not an issue for consideration in this ruling. The procedure of impeaching and striking out a notice of appeal already filed is prescribed under rule 86 of the Court of Appeal Rules, which the 1<sup>st</sup> respondent could have independently pursued. In any event, the jurisdiction to strike out an appeal does not fall within the province of a single Judge. Further, a finding of non-existence of a notice of appeal at this stage without giving the applicant an opportunity to reply to the 1<sup>st</sup> respondent's allegation of non-service, would be prejudicial to the applicant. It is also necessary to point out that the application before me is for extension of time to file a record of appeal premised on a notice of appeal on record.
8. Turning to the substance of the application, I note that there is a notice of appeal dated 8<sup>th</sup> May 2024 and filed on 13<sup>th</sup> May 2024. The decision sought to be appealed was made on 3<sup>rd</sup> May 2024 and the applicant therefore filed the notice within fourteen days thus complying with the timeline provided under rule 77(1) of the Court of Appeal Rules. Ordinarily, the appeal ought to have been filed within sixty days from the date the notice of appeal was lodged. Therefore, in this case the appeal ought to have been filed by 12<sup>th</sup> July 2024 yet the applicant moved the Court on 6<sup>th</sup> November 2024. The delay was for about 114 days.
9. I am cognizant of the principle reiterated in Andrew Kiplagat Chemaringo v Paul Kipkorir Kibet [2018] eKLR that the law does not set the minimum or maximum period of delay, but what is required is that the delay be satisfactorily explained. The reason advanced by the applicant is that counsel erroneously believed that the case was settled, as that is what the CTS showed, hence the appeal was not filed. And that it was only after they were served with a supplementary affidavit that they realized that the matter was still alive. Even though no extract was annexed to prove this statement, the respondents have not challenged the averment, and in my view, the reason advanced by the applicant for the delay remains un rebutted. In the circumstances, I find the explanation for the delay satisfactory.
10. The next issue is whether allowing the application will prejudice the respondents. For the 1<sup>st</sup> respondent, the prejudice is that the applicant will continue to levy fees related to the Trade Accreditation Permit Certificate, yet the same was removed by the South Sudan Tax Authority vide their letter dated 5<sup>th</sup> October 2024. It is trite that the existence of an appeal, unless otherwise expressly stated, does not act as a stay. Therefore, the apprehension by the applicant is without basis, as what could happen without the appeal can still happen with the appeal in place. Additionally, the existence of the letter from the South Sudan Tax Authority is already a reprieve to the applicant and, in appropriate fora, can be helpful to bar that which the applicant fears in the event the applicant is allowed to appeal out of time. In my view, the 1<sup>st</sup> respondent will not be prejudiced should the applicant be granted leave to file the record of appeal out of time.
11. Consequently, I find the notice of motion dated 6<sup>th</sup> November 2024 merited and allow it. The applicant shall file and serve the record of appeal within ten (10) days of the date of the delivery of this ruling. Any activity that follows the filing of a record of appeal shall be undertaken in accordance with the rules of the Court.

The costs of this application shall be in accordance with the order on costs in the intended appeal.

**DATED AND DELIVERED AT NAKURU THIS 11<sup>TH</sup> DAY OF JULY, 2025**

**W. KORIR**

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**JUDGE OF APPEAL**

I certify that this is a True copy of the original

Signed

**DEPUTY REGISTRAR**

