



REPUBLIC OF KENYA



KENYA LAW
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**Gatobu v Gacheri (Civil Application E048 of 2025)
[2025] KECA 1271 (KLR) (11 July 2025) (Ruling)**

Neutral citation: [2025] KECA 1271 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NYERI
CIVIL APPLICATION E048 OF 2025
W KARANJA, JA
JULY 11, 2025**

BETWEEN

STANLEY GATOBU APPLICANT

AND

JOYCE GACHERI RESPONDENT

(Being an appeal from the Judgment and Decree of the Environment and Land Court of Kenya at Meru (Nzili, J.) dated and delivered on 17th July, 2024 in E. L. C. Appeal No. E041 of 2023)

RULING

1. By the notice of motion dated 7th April, 2025, the applicant, Stanley Gatobu seeks leave of this Court under Rule 4 of the Court of Appeal Rules: -

“To file and lodge a Notice of Appeal out of time against the judgment dated and delivered on 17th July, 2024 at the Environment and Land Court at Meru ELCA E041 of 2023.”
2. The application is predicated on grounds, inter alia, that the applicant lodged “notice of intention to sue” in time; that the proceedings took a long time to prepare occasioning delay in filing of the memorandum of appeal; the delay was not advertent and that the intended appeal raises weighty issues of law and it has overwhelming chances of success.
3. The application is supported by the affidavit of the applicant sworn on 7th April, 2025 in which he reiterates his grounds.
4. In the affidavit however, the applicant deposes that he “lodged and filed a notice of appeal on time” and he has annexed a copy of a notice of appeal and a letter asking to be supplied with certified copies of the proceedings and judgment. I note however, that the said annexures do not bear the date or stamp



of the Deputy Registrar and nor does the notice of appeal have the date when it was lodged. On face value, therefore, the two annexures have no probative value for purposes of this application.

5. The application is opposed by the respondent (Joyce Gacheri) through her replying affidavit sworn on 16th April, 2025. The respondent deposes, inter alia, that she was never served with the said notice of appeal. She also states that if the notice of appeal was filed on time, then the applicant would not be asking the Court for extension of time to file and lodge a notice of appeal. She states that she was not served with the letter requesting for proceedings, and therefore, the applicant cannot rely on the proviso to Rule 84 (2) of the *Court of Appeal Rules*.

6. She goes on to say that no plausible reason has been given for the delay which was about nine (9) months since delivery of the judgment.

She urges that the application is defective and incompetent and the same should be dismissed.

7. I have considered the application along with the rival affidavits, the submissions by both parties; and the law. Although the discretion to extend time under Rule 4 of this Court's Rules is unfettered, there are restraints and time cannot be extended on a whim. 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 -vs- 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 -vs- IEBC* [2014] eKLR.

8. In the application before me, it appears that counsel for the applicant is unaware of the requirements the application needs to meet for it to succeed. I say so because it seems that counsel is not even sure of the orders he is seeking from the Court. Whereas the application seeks extension of time to lodge a notice of appeal, he deposes that he filed the notice of appeal within the required time. Whereas, he seems to ask for extension of time to file the record of appeal out of time, that is not a prayer on the face of the application.

9. Even if the Court was to assume that the application is for both prayers, there has been no attempt by the applicant to give reasons for the delay of nine (9) months. My view is that none (9) months was inordinate and the delay has not been explained.

10. In regard to the record of appeal, as rightly submitted by the respondent, the letter bespeaking the proceedings was not copied or served on counsel for the respondent and the applicant cannot, therefore, rely on the proviso to rule 84(2) of the *Court of Appeal Rules*.

11. My conclusion is that this application does not pass muster and the same is hereby dismissed with costs to the respondent.

DATED AND DELIVERED AT NYERI THIS 11TH 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

