



REPUBLIC OF KENYA



KENYA LAW
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**Langat v Langat (Civil Application E062 of 2024)
[2025] KECA 1239 (KLR) (11 July 2025) (Ruling)**

Neutral citation: [2025] KECA 1239 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT ELDORET
CIVIL APPLICATION E062 OF 2024**

WK KORIR, JA

JULY 11, 2025

BETWEEN

WILSON KIMUTAI LANGAT APPLICANT

AND

SARAH KERUBO LANGAT RESPONDENT

(Being an application for leave to file an appeal out of time against the judgment of the High Court at Kapsabet (J. R. Karanjah, J.) dated 10th June 2024 in HCCC No. E002 of 2022)

RULING

1. In the notice of motion dated 29th November 2024, Wilson Kimutai Langat seeks the leave of the Court to file an appeal out of time against the judgment of the High Court in Kapsabet HCCC No. E002 of 2024. The application, which is supported by the applicant's affidavit is premised on the grounds that upon delivery of the judgment, the applicant filed a notice of appeal within time, requested for the proceedings and served the letter bespeaking such request on the respondent but did not receive the proceedings in good time. The applicant avers that he has since received the proceedings and if time is enlarged, he will proceed to file the appeal without further delay.
2. In opposing the application, Sarah Kerubo Langat avers that there is no valid notice of appeal on record and therefore the application is baseless. She also avers that she has never been served with the alleged notice of appeal and that no prejudice will be suffered by the applicant if the order sought is denied. It is additionally her deposition that should the application be allowed, she will be prejudiced as she has used money and time to execute the judgment of the High Court, and that further delay of the proceedings will subject her to continued suffering at the hands of the applicant. She therefore, prays that the application be dismissed with costs.
3. On 7th May 2025 when this application came up for hearing, counsel on record for the parties had filed their respective written submissions.



4. The firm of Mutta & Co. Advocates, in their submissions, reiterated the grounds in support of the application and urged that the applicant had demonstrated sufficient reasons to warrant enlargement of time. Counsel specifically urged that the delay was not inordinate and was caused by factors beyond the control of the applicant, and an order of enlargement of time was merited to allow the applicant to pursue his appeal.
5. For the respondent, the firm of Kipkosgei Chege & Co. Advocates urged that the application lacked merit and should be dismissed with costs. Counsel argued that the delay was inordinate and the reasons tendered were unsatisfactory hence the orders sought should not be granted. Counsel relied on *Grace Wanja Njuguna vs. Andrew Kingori* [2021] eKLR and *Bi-Mach Engineers Ltd vs. James Kaboro Mwangi* [2011] eKLR to urge for the dismissal of the application because of the applicant's indolence.
6. The principles guiding the exercise of the discretion on enlargement of time were expressed by the Supreme Court in *Salat vs. Independent Electoral and Boundaries Commission & 7 Others* [2014] KESC 12 (KLR) 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.”
7. Guided by the above principles, I have reviewed the application as well as submissions by counsel. In my view, the issue for determination is whether the delay has been satisfactorily explained and, if so, whether the respondent will be prejudiced should time be enlarged.
 8. Before I delve into the merits of the application, it is important to point out that even though the application is composed in a manner suggesting that it is an application for enlargement of time to file an appeal, the 2nd and 3rd orders sought in the motion reveal that it is an application to regularize a Notice of Appeal filed outside the prescribed time. This explains the respondent's argument that the application should be dismissed for lack of a proper Notice of Appeal on record.
 9. Having said the foregoing, the application before me is to regularize a Notice of Appeal dated 22nd July 2024. The impugned judgment having been delivered on 10th June 2024, the Notice of Appeal ought to have been filed by 24th June 2024. The present application being dated 29th November 2024, the



delay was for approximately 5 months. I am alive to the holding in *Andrew Kiplagat Chemaringo vs. Paul Kipkorir Kibet* [2018] eKLR that the law does not set out any minimum or maximum period of delay, but that any delay should be satisfactorily explained.

10. The reason advanced by the applicant for the delay is that the typed proceedings were not availed on time. However, as was explained by the Supreme Court in *University of Eldoret & Another vs. Sitienei & 3 others* [2020] KESC 76 (KLR):

“The filing of a Notice of Appeal is not premised on any occurrence or condition to be fulfilled by the appellant. The filing of a Notice of Appeal signifies the intention to appeal.”

11. Although the Supreme Court in the above decision was dealing with its rules, the dictum applies to proceedings before this Court. Rule 77 of the *Court of Appeal Rules, 2022* does not place an obligation on an appellant to secure the typed proceedings before filing a Notice of Appeal. In light of this statutory requirement, the reason advanced by the applicant cannot be said to be satisfactory in light of the holding by the Supreme Court in *Salat vs. Independent Electoral and Boundaries Commission & 7 Others* (*supra*) that:

“Extension of time being a creature of equity, one can only enjoy it if he acts equitably: he who seeks equity must do equity. Hence, one has to lay a basis that he was not at fault so as to let time to lapse. Extension of time is not a right of a litigant against a court, but a discretionary power of the courts which litigants have to lay a basis where they seek courts to grant it...[I]t is clear that the discretion to extend time is indeed unfettered. It is incumbent upon the applicant to explain the reasons for delay in making the application for extension and whether there are any extenuating circumstances that can enable the Court to exercise its discretion in favour of the applicant.”

12. Even if I were to assume that the application is for the enlargement of time to file the record of appeal, the same fate would still befall the request. As I have already pointed out, there is no proper Notice of Appeal on record upon which such an application can be based. Faced with a similar scenario, the Court in *Kathuri vs. Munyoki* [2022] KECA 1211 (KLR) held that:

“The judgment from which the applicant seeks to appeal was delivered on October 19, 2020. He lodged his notice of appeal on November 5, 2021, more than one year later. It is noteworthy that the applicant has not applied for extension of time to file and serve his notice of appeal. Accordingly, there is no notice of appeal properly on record to merit consideration of his application for extension of time to file his memorandum of appeal..

I also hasten to point out that the applicant’s application for extension of time to file a memorandum of appeal does not of itself excuse him from the requirement to express its intention to appeal by giving the requisite notice under rule 77 within the prescribed time, or out of time with leave of the court.”

13. The applicant is not candid in the manner in which the application is couched. He seeks the regularization of an invalid Notice of Appeal without providing any valid reason as to why the Notice of Appeal was not filed within the prescribed time. The reasons advanced by the applicant are therefore unsatisfactory. Equity cannot therefore come to his aid in such circumstances.
14. Consequently, the fate of this application is dismissal. The notice of motion dated 29th November 2024 lacks merit and is hereby dismissed with costs to the respondent.

DATED AND DELIVERED AT NAKURU THIS 11TH 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

