



Yego v Kogo (Civil Application E003 of 2025) [2025] KECA 1225 (KLR) (11 July 2025) (Ruling)

Neutral citation: [2025] KECA 1225 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT ELDORET
CIVIL APPLICATION E003 OF 2025**

WK KORIR, JA

JULY 11, 2025

BETWEEN

DANIEL KITANUI YEGO APPLICANT

AND

EDWIN MARTIN KOGO RESPONDENT

(Being an application for leave to file an appeal out of time against the judgment of the Environment and Land Court at Eldoret (J.M. Onyango, J.) dated 14th November 2024 in ELC Case No. 280 of 2014)

RULING

1. The notice of motion dated 14th January 2025 filed by the applicant, Daniel Kiptanui Yego, seeks enlargement of time to file an appeal. The application is supported by the applicant's affidavit sworn on the date of the application. The application is premised on the ground that the trial court delayed in supplying the typed proceedings despite the Notice of Appeal and the letter bespeaking proceedings being lodged within the requisite time.
2. The respondent filed a replying affidavit dated 14th February 2025 opposing the application. Basically, it is his contention that the intended appeal is not arguable and that the application should be dismissed with costs.
3. When this application came up for hearing on 7th May 2025, only the applicant's counsel had filed submissions dated 17th February 2025. In the submissions, the firm of Mutta Advocates LLP asserts that the delay has been sufficiently explained and should be excused. To buttress this argument, counsel referred to Del Monte Kenya Ltd vs. Patrick Njuguna Kariuki [2016] eKLR and rule 4 of the Court of Appeal Rules to urge that extension of time is discretionary and will be granted upon satisfactory explanation of the delay. Counsel maintained that the delay was beyond the applicant's control and should be excused and the application allowed.



4. The principles guiding the exercise of the discretion on enlargement of time were outlined 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.”
5. The list is not exhaustive and not all the factors listed therein must be applied in every case. A court seized of an application for extension of time retains the discretion to decide what considerations are applicable to the case at hand. In that regard, this Court in *Margaret Muthoni Muchiga vs. Esther Kamori Gichobi* [2010] eKLR stated that:

“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; see *Samuel Kinyua Mutugi v. Eutyclus Muthui* (Civil Application No. Nai 334 of 2004 (unreported), underlining emphasized.”

6. I have considered the application, the replying affidavit and the submissions of the parties. In my view, this application turns on the resolution of the question whether the delay has been satisfactorily explained.
7. The first issue for my determination is whether the delay was inordinate. Rule 84 of the Court of Appeal Rules provides the timelines within which an appeal should be filed as follows:

“84. Institution of appeals

1. Subject to rule 118, an appeal shall be instituted by lodging in the appropriate registry, within sixty days after the date when the notice of appeal was lodged -
 - a. a memorandum of appeal, in four copies;
 - b. the record of appeal, in four copies;



- c. the prescribed fee; and
- d. security for the costs of the appeal:

Provided that where an application for a copy of the proceedings in the superior court has been made in accordance with sub-rule (2) within thirty days after the date of the decision against which it is desired to appeal, there shall, in computing the time within which the appeal is to be instituted, be excluded such time as may be certified by the registrar of the superior court as having been required for the preparation and delivery to the appellant of such copy.

- 2. An appellant shall not be entitled to rely on the proviso to sub-rule (1) unless the appellant's application for such copy was in writing and a copy of the application was served upon the respondent.”
8. In the present application, it is not disputed that a Notice of Appeal was filed within time. The applicant's letter bespeaking the proceedings dated 21st November 2024 was filed within 30 days as is required by the proviso to rule 84(1) of the Court of Appeal Rules.
9. The reason advanced by the applicant for the delay in lodging the appeal is that the typed proceedings have not been availed by the deputy registrar of the trial court. At paragraph 5 of the supporting affidavit, the applicant avers that:
- “THAT I have not managed to secure the typed proceedings which I have been told they are not yet ready and now wish that time be extended/enlarged as the proceedings are being typed and for me to officially lodge an appeal before this honorable court.”
10. In the circumstances, the applicant's predicament is solved by resorting to the proviso to rule 84(1) of the Court of Appeal Rules, which in part provides that:
- “There shall, in computing the time within which the appeal is to be instituted, be excluded such time as may be certified by the registrar of the superior court as having been required for the preparation and delivery to the appellant of such copy.”
11. In *Kirira vs. Deputy Registrar High Court Nyeri & 4 others* [2025] KECA 953 (KLR) the Court held that:
- “Recognizing the exigencies that may make it practically impossible to obtain proceedings on time, the proviso to rule 84 allows for obtaining a certificate of delay, indicating the period it took to obtain the proceedings. A party may, for any other reason, seek leave of the court to file the record of appeal out of time.”
12. I also observe that through the 4th prayer in the application, the applicant seeks a stay of execution of the decision he intends to appeal. That is a prayer reserved for a full bench of the Court and does not fall within the docket of a single Judge. I therefore cannot make any determination on this prayer.
13. In short, the applicant seeks what is freely available under the proviso to rule 84(1) as regards the prayer for enlargement of time, and what cannot be given to him by a single judge as regards the prayer for



stay of execution. In the circumstances, the application is for striking out and is hereby struck out. The respondent shall have the costs of this unnecessary application from the applicant.

14. It is so ordered.

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

