



**Peter (Suing as the Administrator of the Estate of Peter Mitambo Kiarago) v Ndambiri
(Civil Application E127 of 2024) [2025] KECA 1245 (KLR) (7 July 2025) (Ruling)**

Neutral citation: [2025] KECA 1245 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NYERI
CIVIL APPLICATION E127 OF 2024**

W KARANJA, JA

JULY 7, 2025

BETWEEN

**LUCY WANJUKI PETER APPLICANT
SUING AS THE ADMINISTRATOR OF THE ESTATE OF PETER MITAMBO
KIARAGO**

AND

NELSON KATHURI NDAMBIRI RESPONDENT

(An application for extension of time to file and serve the memorandum and the record of appeal respectively and out of time in an intended appeal from the Judgment and Decree of the Environment and Land Court of Kenya at Embu (Kaniaru, J.) dated and delivered on 6th November, 2023 in E. L. C. Appeal No. 8 of 2019)

RULING

1. On 6th November 2023, the learned Judge (A. K. Kaniaru) rendered the judgment in Embu Environment and Land Court Appeal No. 8 of 2020. The applicant, who was the respondent in the said appeal was aggrieved by the outcome. She did not, nonetheless, file a notice of appeal within fourteen days as provided for under Rule 77 of the Court of Appeal Rules. Instead, she lodged the notice of appeal at the Environment and Land Court registry on 11th July, 2024 through the firm of Kimanzi & Advocates.
2. Four months later, on 25th November 2024, she filed this application in which she seeks leave to lodge and serve the notice of appeal out of time; and to file an appeal against the judgment of the Environment and Land Court Appeal No. 8 of 2019 out of time.
3. The application is predicated on eight (8) grounds on its face and supported by the applicant's affidavit in support sworn on even date. She deposes that a summary of the judgment was delivered in the



- presence of her advocate then on record; that the file was taken away by the learned Judge for purposes of perfecting the judgment and so she could not file a notice of appeal.
4. She stated that she and her erstwhile counsel kept asking for the file but it was not available. She averred that she received a copy of the judgment on 8th April, 2024 and after going through the judgment she was convinced that she has a good appeal.
 5. She has annexed documents to show that she got sick and was admitted in hospital between 4th January 2024 and 23rd January, 2024; and from 4th March 2024 to 16th March 2024. She has not, however, said why she did not simply file the notice of appeal on time and await the proceedings to enable her file the record of appeal. She states that the delay in filing the appeal was not deliberate and that she has an arguable appeal.
 6. The application is opposed by the respondent, Nelson Kathuri Ndambiri, vide his replying affidavit sworn on 17th February 2025. He deposes that the applicant has not given valid reasons for the delay; that the applicant was present in court when the judgment was delivered; that she only applied for a copy of the proceedings eight (8) months after delivery of the said judgment and that delay was not explained.
 7. According to the respondent, a copy of the proceedings and judgment were supplied to the applicant on 8th April 2024 but that she never obtained a certificate of delay. He maintains that he will be greatly prejudiced if the application is allowed as he took possession of the suit premises and has extensively developed the same. He has annexed photographs showing that he has even constructed permanent structures on the property. He says that the appeal is not arguable and has no chances of success. He urges the Court to dismiss this application with costs.
 8. Both parties filed submissions in which they buttressed their depositions as well as cited the applicable law. The application was canvassed by way of written submissions.
 9. I have considered the application, the rival affidavits and submissions and the law. The law on extension of time is well settled. Over the years this Court and the Supreme Court have established the principles to guide the court in exercising its discretion on whether to extend time or not.
 10. The law in this area is settled. Under Rule 4 of the Court of Appeal Rules, extension of time is not an automatic right. It is an equitable remedy that is only available to a deserving party at the discretion of the Court.
 11. In the exercise of discretion under rule 4, the Court takes into account various factors, as demonstrated in Paul Wanjohi Methane -vs- Duncan Gichane Mathenge [2013] eKLR where the 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 Nicholas Kiptoo Korir Arap Salat -vs- IEBC [2014] eKLR.
 12. The applicant is enjoined to explain the entire delay. Has the applicant sufficiently explained the entire delay? It is not disputed that judgment in this matter was delivered on 6th November 2023 in the presence of learned counsel for the applicant. Every advocate knows, or should know that one doesn't need copies of the judgment to file a notice of appeal. All one needs to know is that they are aggrieved



with the judgment and so notify the other party by filing and serving a notice of appeal. No reason has been given for waiting until 11th July 2024 to lodge the notice of appeal. Thereafter, the applicant's counsel waited until 25th November 2024 to file this application, another delay of 4 months.

13. The only explanation given was that the applicant was unwell and was admitted in hospital in the first instance between 4th January 2024 and 23rd January 2024 and later on 4th March to 16th March 2024. Even assuming that the applicant's physical presence was needed for the notice of appeal to be filed, no reason was given why the same was not filed before 4th January 2023, or in the month of February 2024 before she was readmitted in hospital in March. Lack of money is not an acceptable reason for not filing the notice of appeal as the applicant could have applied to court to be allowed to sue as a pauper.
14. Of more concern to me is that there is no evidence that counsel for the applicant applied for the proceedings as required and served the respondent with the said letter to enable the applicant seek refuge under the proviso to Rule 84(2) of the Court of Appeal Rules in regard to extension of time to file the record of appeal.
15. In the meantime, having not been notified of any appeal against the said decision, the respondent went ahead and developed the property and constructed some permanent buildings thereon. He has annexed photographs to that effect to his replying affidavit. Allowing this matter to drag on further will be very prejudicial to the respondent.
16. My conclusion is that the delay involved was inordinate; no sufficient reason was given for the delay and there is no other sufficient reason demonstrated to persuade me to exercise my discretion to extend time in favour of the applicant. I find this application devoid of merit and dismiss it with costs to the respondent.

DATED AND DELIVERED AT NYERI THIS 7TH 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

