



REPUBLIC OF KENYA



**Gikonyo v Mwangi (Civil Application E003 of 2025)  
[2025] KECA 1216 (KLR) (4 July 2025) (Ruling)**

Neutral citation: [2025] KECA 1216 (KLR)

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

**F SICHALE, JA**

**JULY 4, 2025**

**BETWEEN**

**HANNAH WAMBUI GIKONYO ..... APPLICANT**

**AND**

**GEORGE GIKONYO MWANGI ..... RESPONDENT**

*(Being an Application for Extension of Time to file and serve Notice of Appeal and Appeal against the Judgment and Orders of the Environment and Land Court (M.D Mwangi J), dated 29th October 2024 in Nairobi ELC Case No. E227 of 2021)*

**RULING**

1. Before me is the motion on notice dated 20<sup>th</sup> December 2024, brought under Sections 3, 3A, 3B, *Appellate Jurisdiction Act*; Rules 3 and 4 of the Court of Appeal Rules and all other enabling provisions of the Law in which Hannah Wambui Gikonyo (“the applicant herein”) seeks the following orders:
  - “i. Spent.
  - ii. That the time limited to serve the Notice of Appeal herein be extended.
  - iii. That the appellant/applicant be allowed to file a Notice of Appeal and the same be deemed as having filed and served within the extended period.
  - iv. That the Honourable Court grants orders that the Notice of Appeal against the judgment delivered by Honourable Justice M.D Mwangi in Environment and Land Court No. E227 of 2021 on 29 October 2024 be extended.
  - v. That the Honourable Court does grant orders within which the Notice of Appeal should be filled.



- vi. That the Honourable Court grants the applicant an extension of time within which she is required to lodge the Memorandum and Record of Appeal out of time.
  - vii. That the Honourable Court does grant orders within which the Record of Appeal should be filled.
  - viii. That cost of this appeal abide with the result of the said appeal or be dealt with as the justice of the case shall seem to require.”
2. The motion is supported on the grounds on the face of the motion and an affidavit sworn by the applicant who deposed inter alia that being aggrieved with the judgment delivered by M.D Mwangi J, on 29<sup>th</sup> October 2024, in Nairobi ELC Case No. E227 OF 2021, she had instructed her advocates to lodge an appeal against the same.
  3. She further deposed that upon her advocates on record following up with the ELC Milimani Registry, on the location of the file, they were informed that the file was still in chambers with the Honourable Judge as judgment was yet to be typed and that the judgment was eventually uploaded on the Case Tracking System on 11<sup>th</sup> November 2024.
  4. That, upon receipt of a copy of the judgment, it was noticed that there was an error on the date as it indicated that judgment was delivered on 29<sup>th</sup> November 2024, as opposed to 29<sup>th</sup> October 2024 and that by the time the advocate for the proposed appellant could obtain sufficient instructions, the prescribed time for filing a Notice of Appeal had run out.
  5. She further deposed that in view of the above, her advocates lodged a Notice of Appeal dated 8<sup>th</sup> November 2024, for execution by the Deputy Registrar which notice was executed on 18<sup>th</sup> November 2024 and made available for collection on 9<sup>th</sup> December 2024 and that further the said Notice of Appeal was prepared and lodged 20 days out of time.
  6. The motion was opposed vide a replying affidavit sworn by the respondent on 10<sup>th</sup> January 2025, who deposed inter alia that the application had no merit, was frivolous, vexatious and an abuse of the court process meant to embarrass the Court and that he had filed and served upon the applicant an application to strike out the defective and incompetent Notice of Appeal, which application had elicited no response from the applicant.
  7. He further deposed that both parties were supplied with a copy of the judgment within and before the lapse of the mandatory statutory period of 14 days within which to lodge a Notice of Appeal and that the averments that it took several days before the impugned judgment could be uploaded on the CTS; that the judge kept the file in his chambers and that the impugned judgment had not been typed were not only false, but also a misrepresentation of facts.
  8. In a rejoinder to the averments contained in the respondent’s replying affidavit dated 10<sup>th</sup> January 2025, the applicant filed a further affidavit sworn on 15<sup>th</sup> January 2025, largely denying the averments contained in the said affidavit.
  9. It was submitted for the applicant that the delay in filing the Notice of Appeal and serving the same upon the respondent which was 20 days from the date of the judgment was a short period and not inordinate and further that, the applicant had an arguable appeal with chances of success and that in the event the orders sought herein were not granted, the intended appeal would be rendered nugatory.



10. On the other hand, it was submitted for the respondent that there was undue delay in bringing the instant motion and that it was trite law that in an application for extension of time; the whole period of delay (even one day), should be explained satisfactorily to the Court and that even a delay of one day can be inordinate depending on the circumstances of each case. For this proposition reliance was placed on the case of County Executive of Kisumu – v- County Government of Kisumu & 8 Others [2017] eKLR, Nairobi City County –v- Salima Properties Limited [2020] eKLR and Harun Muchai Murithi –v- Joab Indech Wakhu & Another [2023] eKLR.
11. It was thus submitted that the instant application had been filed approximately two months after delivery of the judgment and that the same had been filed inordinately late and therefore incompetent.
12. Turning to prejudice, it was submitted that vide the impugned judgment, the court made a positive finding against the applicant to the effect that; she was violating the respondent’s right to property and that further, the respondent would be immensely prejudiced if discretion was exercised in favour of the applicant for the reasons inter alia that his proprietary rights to own, use and enjoy the property would be infringed on and that further the, applicant had admitted that she was enjoying rental income from the suit property.
13. I have carefully considered the motion, the grounds thereof, the supporting affidavit, the replying affidavit, the further affidavit, the respective parties’ submissions, the cited authorities and the law.
14. The principles upon which this Court exercises its discretion pursuant to Rule 4 to extend time or not are now old hat. The Court has wide and unfettered discretion in deciding whether to extend time or not. However, in exercising its discretion the Court should do so judiciously.
15. See *Mwangi vs. Kenya Airways Limited* (2003) KLR 486 where this Court stated thus:

“Over the years, the Court has set out guidelines on what a single Judge should consider when dealing with an application for extension of time under Rule 4 of the Rules. For instance, in *Leo Sila Mutiso V Rose Hellen Wangari Mwangi* (Civil Application No. Nai 255 of 1997 (unreported), the Court expressed itself thus;

“It is now well settled that the decision whether or not to extend time for appealing is essentially discretionary. It is also well settled that in general, the matters which this Court takes into account in deciding whether to grant an extension of time are; first the length of the delay, secondly, the reason for the delay; thirdly (possibly) the chances of the appeal succeeding if the application is granted; and, fourthly, the degree of prejudice to the respondent if the application is granted.”
16. In the instant case and as regards the length of the delay, the impugned judgment was delivered on 29<sup>th</sup> October 2024, whereas the Notice of Appeal was filed on 18<sup>th</sup> November 2024. There has therefore been a delay of about 20 days which delay, from the circumstances of this case I do not consider to be inordinate.
17. Turning to reason (s) proffered for the delay, the applicant contended that after delivery of the judgment on 29<sup>th</sup> October 2024, and upon her advocates following up with the Milimani ELC Registry on the location of the court file, they were informed that the file was still in chambers with the Honourable Judge as the judgment was yet to be typed.
18. Additionally, the applicant contended that it was not until 11<sup>th</sup> November 2024, that the impugned judgment was uploaded on the Case Tracking System.



19. Given the circumstances, I consider the reasons given for the delay to be reasonable/plausible and ultimately therefore, I am of the considered opinion that the delay herein has been sufficiently explained to the satisfaction of this Court.
20. As to the arguability or otherwise of the intended appeal, it would not be in my place to determine the same sitting as a Single Judge and I will therefore not delve further into this issue.
21. Finally, on prejudice, I am satisfied that the respondent will not be prejudiced in anyway if the instant motion is allowed as both parties will be accorded an opportunity to ventilate their respective positions before the Court. On the other hand, if the instant motion is not allowed, the applicant will be immensely prejudiced as she will have been completely ousted from the seat of justice.
22. The totality of my findings therefore is that that the applicant has demonstrated and satisfied the existence of the principles for consideration in the exercise of my unfettered discretion pursuant to Rule 4 of this Court to extend time within which to file the intended appeal.
23. Accordingly, the applicant's motion dated December 20, 2024, is merited and the same is hereby allowed as prayed.
24. The applicant shall proceed to file the appeal within a period of 30 days from the date of this ruling failure to which these orders shall stand vacated.
25. The costs of this motion shall abide the outcome of the intended appeal.

It is so ordered.

**DATED AND DELIVERED AT NAIROBI THIS 4<sup>TH</sup> DAY OF JULY, 2025.**

**F. SICHALE**

.....

**JUDGE OF APPEAL**

I certify that this is a true copy of the original.

Signed

**DEPUTY REGISTRAR**

