



Mailu (Suing as the Legal Representative of the Estate of Mailu Mulinge - Deceased) v Deputy County Commissioner Mukaa Sub- County & 2 others; Kikole (Interested Party) (Civil Application E133 of 2023) [2025] KECA 1193 (KLR) (4 July 2025) (Ruling)

Neutral citation: [2025] KECA 1193 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPLICATION E133 OF 2023**

**F SICHALE, JA
JULY 4, 2025**

BETWEEN

**MUTUA MAILU APPLICANT
SUING AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF MAILU
MULINGE - DECEASED**

AND

**DEPUTY COUNTY COMMISSIONER MUKAA SUB- COUNTY 1ST
RESPONDENT
DIRECTOR OF LAND ADJUDICATION NAIROBI 2ND RESPONDENT
LAND REGISTRAR MAKUENI COUNTY 3RD RESPONDENT**

AND

JOHN MUTISO KIKOLE INTERESTED PARTY

(Being an Application for Extension of Time within which to lodge a Memorandum of Appeal and Record of Appeal against the Ruling of the Environment & Land Court at Makueni (T. Murigi J), dated 19th October 2022 in (Makueni ELC JR APPL NO. E007 of 2021)

RULING

1. Mutua Mailu who is in person and the “applicant herein”, has invoked the jurisdiction of this Court sitting as a Single Judge vide a Motion on Notice dated 3rd April 2023, brought pursuant to the



provisions of Rules 3A and 3B of the Appellate Jurisdiction Act and 4 and 82 of the Court of Appeal Rules 2010 and any other enabling provisions of the Law seeking the following orders:

- i. That leave be granted to the applicant to file a notice of Appeal and Memorandum of Appeal – record of Appeal out of time.
 - ii. That costs of this application be in the cause.”
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 and dissatisfied with the ruling delivered by T. Murigi, J on 19th October 2022, he had filed a Notice of Appeal and applied for certified copies of the proceedings and ruling for purposes of appeal.
3. That, he was supplied with the said copies of the proceedings and ruling on 14th December 2022 and immediately thereafter, he got seriously sick and could therefore not file the appeal on time.
4. He thus deposed that failure to file the appeal on time was not deliberate but due to circumstances beyond his control and that further he had an arguable appeal with high chances of success.
5. The motion was opposed vide a replying affidavit sworn on 22nd February 2024 by John Mutiso Kikole (“the interested party herein”), who deposed inter alia that the applicant was represented by an advocate in the High Court and that he did not seek leave of the court after judgment was entered to act in person and that as such, the instant motion had been filed by a stranger.
6. He further deposed that the applicant had contended that he was supplied with the proceedings on 14th December 2022, yet he filed the instant motion on 6th April 2023, which was a delay of 6 months, which delay was inordinate.
7. There was no response on the part of the 1st, 2nd and 3rd respondents despite having been served with a copy of the application on 19th, 14 and 15th February 2024, respectively.
8. Regarding the length of the delay, it was submitted by the applicant that the ruling sought to be appealed against was rendered on 19th October 2022, whereas the Notice of Appeal was filed on 14th November 2022, which was 10 days late, which delay was not inordinate.
9. As regards the reasons for the delay, the applicant submitted that the same was mainly due to delay by the court in providing him with copies of the proceedings, his ill health and a breakdown in communication with his counsel previously on record.
10. On the other hand, it was submitted for the interested party that the impugned ruling was delivered on 19th October 2022 and the applicant contended that he was supplied with the proceedings on 14th December 2022 and he filed the instant motion on 6th April 2023, which was 6 clear months from the date he was supplied with the same, which delay was inordinate.
11. It was further submitted that the applicant had attributed the delay due to sickness but during the same period, he had filed and prosecuted an application for stay pending appeal. Consequently, it was submitted that the applicant had not met the threshold for granting orders to file an appeal out of time.
12. I have carefully considered the motion, the grounds thereof, the supporting affidavit, the replying affidavit, the applicant’s submissions, the interested party’s submissions, the cited authorities and the law.



13. 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.
 14. See *Mwangi v 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.”
 15. In the instant case and as regards the length of the delay, the impugned ruling was delivered on 19th October 2022. The motion herein was filed on 14th November 2022, a delay of about 12 days which delay, I do not consider to be inordinate from the circumstances of this case.
 16. Turning to reasons proffered for the delay, the applicant contended that the same was due to inter alia delay by the court in supplying certified proceedings, ill health and breakdown in communication between him and his previous advocate in the the High Court.
 17. From the circumstances of this case, 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.
 18. As to the arguability or otherwise of the intended appeal, it would not be in my place to make a determination on the same sitting as a Single Judge and I will therefore make no comment regarding the same.
 19. Finally on prejudice, I am satisfied that the respondents will not suffer any prejudice if the instant application is allowed as they did not even respond to the motion despite having been served with the same, save for the interested party herein.
 20. Taking into totality all the circumstances of this case, I am of the considered view 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.
 21. Accordingly, the applicant’s motion dated 3rd April 2023, is merited and the same is hereby allowed as prayed. The applicant shall file the Notice and Memorandum of Appeal within a period of 30 days from the date of this ruling failure to which these orders shall stand vacated.
 22. The costs of this motion shall abide the outcome of the intended appeal.
- It is so ordered.

DATED AND DELIVERED AT NAIROBI THIS 4TH DAY OF JULY, 2025.

F. SICHALE

JUDGE OF APPEAL



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

Signed

DEPUTY REGISTRAR

