



REPUBLIC OF KENYA



**Edema v Bariso (Civil Application E014 of 2025) [2025] KECA 1251 (KLR) (1 July 2025) (Ruling)**

Neutral citation: [2025] KECA 1251 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NYERI  
CIVIL APPLICATION E014 OF 2025  
A ALI-ARONI, JA  
JULY 1, 2025**

**BETWEEN**

**TAGAYE HUSSEIN EDEMA ..... APPLICANT**

**AND**

**HUSSEIN EDEMA BARISO ..... RESPONDENT**

*(Being an application seeking an extension of time to file an appeal against the Judgment of the High Court of Kenya at Marsabit (Chitembwe, J.) delivered on 19th June 2019 in Misc. Succession No. 1 of 2018)*

**RULING**

1. Before the court is an application by way of a notice of motion dated 29<sup>th</sup> May 2024 brought under Section 79G of the *Civil Procedure Act*, seeking leave to appeal out of time.
2. The application is predicated on the grounds stated in the motion and reiterated in the supporting affidavit of the applicant, Tagaye Hussein Edema, sworn on 29<sup>th</sup> May 2024, wherein he/she states that judgment was delivered on 19<sup>th</sup> June, 2019 in Misc. Succession No. 1 of 2018; the applicant applied for proceedings within the prescribed period of time and paid the requisite fees; the notice of appeal and memorandum of appeal were duly filed; the court delayed to hear an earlier application; the applicant later discovered that leave had been granted for to file an appeal out of time, but his former advocates failed to inform him/her of the same; the appeal is arguable with a reasonable probability of success.
3. The respondent has not filed a response, and neither of the parties has filed submissions.
4. I have considered the application and the supporting affidavit. Although not clear, I understand the applicant to be seeking a further extension beyond the extension granted by the court on 7<sup>th</sup> August 2020, which required the notice of appeal to be filed within 7 days. This, in turn, allowed the filing of the record within the permitted time under the rules. From the annexure, the notice of appeal was



filed on August 12, 2020, within the 7 days as earlier ordered; however, the record of appeal has yet to be filed, necessitating the intervention sought.

5. Rule 4 of the *Court of Appeal Rules* governs the extension of time. It allows the court to exercise discretion to extend the time limited by the Rules for doing any act authorised or required by the Rules. The rule provides as follows:

The Court may, on such terms as may be just, by order, extend the time limited by these Rules, or by any decision of the Court or of a superior court, for the doing of any act authorized or required by these Rules, whether before or after the doing of the act, and reference in these Rules to any such time shall be construed as a reference to that time as extended.

6. In *Leo Sila Mutiso v Helen Wangari Mwangi* [1999] 2 EA p231, this Court set out the principles to be applied in the exercise of its discretion in the determination of any application under Rule 4 as follows:

“The decision whether or not to extend time is discretionary. The Court in deciding whether to grant an extension of time takes into account the following matters: first, the length of the delay; second, 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.”

7. Noting as indicated above, leave to file an appeal out of time had already been sought by the applicant earlier vide an application dated 25<sup>th</sup> July 2019 and time was extended in a ruling delivered on 7<sup>th</sup> August 2020. The applicant now appears to be acting in person, which may explain the technical issues with the application and the fact that she/he was not aware of the extension, despite the notice of appeal having been filed timely by counsel. I appreciate the difficulties a litigant would face in trying to follow the various rules and regulations governing the filing process and the necessary steps. The applicant should, however, appreciate that the rules and the various steps put in place are not to be flouted with the hope of gaining the court's sympathy repeatedly.
8. However, considering the applicant's circumstances and the absence of opposition from the respondent, I am inclined to grant the application and direct that the record of appeal be filed and served within the next 30 days.

**DATED AND DELIVERED AT NYERI THIS 1<sup>ST</sup> DAY OF JULY, 2025.**

**ALI-ARONI**

.....

**JUDGE OF APPEAL**

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

**SIGNED**

**DEPUTY REGISTRAR**

