



**Mwingirwa v Nkuraru & 2 others (Civil Application  
E042 of 2024) [2025] KECA 1432 (KLR) (1 August 2025) (Ruling)**

Neutral citation: [2025] KECA 1432 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NYERI  
CIVIL APPLICATION E042 OF 2024  
W KARANJA, JA  
AUGUST 1, 2025**

**BETWEEN**

**MBIRITHI JEREMIAH MWINGIRWA ..... APPLICANT**

**AND**

**M'MAILUTHA NKURARU ..... 1<sup>ST</sup> RESPONDENT**

**DISTRICT LAND ADJ. SECTION - TIGANIA ..... 2<sup>ND</sup> RESPONDENT**

**THE ATTORNEY GENERAL ..... 3<sup>RD</sup> RESPONDENT**

*(Being an application for leave of the Court to file the record  
of appeal out of time against the Judgment of the High Court at Meru  
(C.K. Nzili, J.) dated 13th July 2022 in Meru ELC No. E003 of 2023)*

**RULING**

1. Before me is a Notice of motion dated 28<sup>th</sup> March 2025, expressed to be brought under rule 1(2) 4, 14, (3) and 84 of the Court of Appeal Rules, 2022. The applicant seeks one order; that the Honorable Court do issue an order that the record of appeal (which is undated) and filed herein be deemed to be filed, served and properly on record.
2. The application is predicated on thirteen (13) grounds on its face and is supported by an affidavit sworn by Mercy Kaume, learned counsel for the applicant sworn on even date.
3. From the said grounds and the depositions in the said affidavit, the applicant says that she is aggrieved by the ruling of Judge Nzili given on 24<sup>th</sup> October 2024 which ruling dismissed an application dated 25<sup>th</sup> of July 2024. According to Ms. Kaume, following the dismissal they moved to this Court vide Civil Application No. E0119/2024, which had not been determined as at the time this application was filed. The Court has not been informed of the outcome of the said application.



4. The application is opposed through the replying affidavit sworn by the 1<sup>st</sup> respondent (M'ailutha Nkuraru) on 7<sup>th</sup> April 2025. According to the respondent, the application has no merit and it is only aimed at delaying justice. The respondent describes the applicant as a perennial and full-time applicant for extension of time both before this Court and before the trial court. He deposes that the applicant's appeal before the ELC was dismissed following his failure to comply with the directions given by the court on several occasions.
5. Both parties have filed submissions which I have considered along with the application and the applicable law. To start with, I agree with the respondent that this is a bad application. The intended appeal is against a ruling by Judge Nzili whereby he dismissed an application for extension of time to file the record of appeal before that court out of time.
6. An appeal against such a ruling does not lie as a matter of right, which means that the applicant herein ought to have sought leave to appeal to this Court which he has clearly not done.
7. Even assuming, for the sake of argument, that the applicant's intended appeal is valid, his application is not clear at all. If the applicant says that he was late in compiling the record of appeal which he intended to file before this Court, then there is a procedure which is clearly set out in the Court of Appeal Rules which he needed to have complied with before he can move this Court for extension of time to file a record out of time. This procedure is set out under rule 84 of the Rules of this Court which will not be necessary for me to replicate here. Learned counsel for the applicant seems to be oblivious of the said rules.
8. There is not before this Court a letter from the applicant's counsel requesting for the proceedings before the trial court which letter was filed within 30 days and copied and served on the respondent within those 30 days. The applicant does not even claim to have written such a letter. There is no certificate of delay in this case as the document described as a certificate of delay is a note from the Deputy Registrar of the ELC saying that there was no delay because the proceedings were requested for and they were supplied within two days of the request. No certificate was therefore issued.
9. With respect to counsel for the applicant, this application has been drafted and brought to court in a very flippant manner and in complete ignorance of the relevant Rules of this Court. There is no basis whatsoever, under the Court of Appeal Rules for me to grant the orders sought. Orders before this Court must be given in accordance with the relevant law and can never be given in vacuo.
10. The application doesn't meet the barest standard expected of an application for extension of time to file a record of appeal out of time. This application is totally devoid of merit and the same is hereby dismissed with costs to the 1<sup>st</sup> respondent.

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

**W. KARANJA**

.....

**JUDGE OF APPEAL**

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

Signed

**DEPUTY REGISTRAR**

