



**Karuga v National Irrigation Authority & 4 others (Civil Application E114 of 2024) [2024] KECA 1872 (KLR) (19 December 2024) (Ruling)**

Neutral citation: [2024] KECA 1872 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NYERI  
CIVIL APPLICATION E114 OF 2024  
A ALI-ARONI, JA  
DECEMBER 19, 2024**

**BETWEEN**

**AGNES MUMBI KARUGA ..... APPLICANT**

**AND**

**NATIONAL IRRIGATION AUTHORITY ..... 1<sup>ST</sup> RESPONDENT**

**MWEA IRRIGATION SCHEME MANAGER ..... 2<sup>ND</sup> RESPONDENT**

**PHYLLIS WANJIKU ..... 3<sup>RD</sup> RESPONDENT**

**MARY WANGUI ..... 4<sup>TH</sup> RESPONDENT**

**NANCY NJOKI ..... 5<sup>TH</sup> RESPONDENT**

*(An application for an extension of time to appeal from the Judgment of the Environment and Land at Kerugoya (Mutungi, J.) delivered on 31st July 2024 in JR. Case No. E003 of 2023)*

**RULING**

1. Before the court is a notice of motion dated 31<sup>st</sup> October 2024 brought under rule 1(2) & 41 of the Court of Appeal Rules, 2010 (now 2022) seeking leave to appeal out of time against the judgment of the Environment & Land Court (ELC) in Kerugoya (Mutungi, J.) that was delivered on 31<sup>st</sup> July 2024.
2. The application is predicated on the grounds on the face of the application and the applicant’s affidavit sworn on the 31<sup>st</sup> of October 2024, wherein the applicant states that she is dissatisfied with the court’s decision and is desirous of appealing against the same; however, the time to file the appeal has since lapsed as the impugned judgment was delivered on 31<sup>st</sup> July 2024; that on the 6<sup>th</sup> of August 2024, the applicant lodged a notice of appeal; immediately after that, she applied for certified copies of proceedings and judgment, which were not received on time, as it took time for the certified copies to be availed to her; she lives far from the court and could not make frequent follow-ups.



3. Further, the applicant states that immediately after the judgment was delivered, her child was involved in a greasy road accident. As a result, the said child was hospitalized and needed the applicant for support as she was bedridden; therefore, by the time her advocate could obtain sufficient instructions, the time for filing the appeal had run out; further, she contends the appeal is arguable and has an overwhelming chance of success; she is indigent and seeks this Court's protection in her quest; that it was only recently, while checking with the registry that she realized that the proceedings were ready way back on 10<sup>th</sup> September 2024; yet she was never informed that the proceedings were ready; she has minimal knowledge of the timelines of filing appeals; upon getting the proceedings, she availed them to her advocate who subsequently filed the current application; the delay was beyond the applicant's control and is not inordinate or so great as not to be inexcusable; the proposed appeal has high chances of success, and the respondents are unlikely to suffer any prejudice.
4. Learned counsel for the applicant filed both submissions and a list of authorities dated 29<sup>th</sup> November 2024. He rehashed the averments in the applicant's affidavit, which I need not repeat. Further, learned counsel relied on the case of Omar Shurie vs. Marian Rashe Yafar [2020] eKLR, where this Court held that the decision to extend the filing of an appeal is discretionary.
5. Further learned counsel relied on the case of Susan Ogutu Oloo & 2 Others vs. Doris Odindo Omolo [2019] eKLR and Thuita Mwangi vs. Kenya Airways Limited [2003] eKLR, where the court considered factors that aid the court in exercising its discretion in extending time to file an appeal out of time and this included the period of delay, the reason for the delay, the arguability of the appeal, the degree of prejudice which the respondent could suffer if the extension was granted, the importance of compliance with time limitation and the effect if any on the administration of justice and public interest if any is involved.
6. Learned counsel for the applicant further cited the Supreme Court decision of Fahim Twaha vs. Timamy Isa Abdalla & 2 Others [2015] eKLR, where the court held that enlargement of time lies within the discretion of the court and is exercised to avoid injustice or hardships resulting from accident, inadvertence, or excusable mistake or error, and is not designed to assist a person who deliberately sought, whether by evasion or otherwise, to obstruct or delay the cause of justice.
7. On the part of the respondents, the 5<sup>th</sup> respondent objected to the application by filing submissions dated 29<sup>th</sup> November 2024 wherein she contended that the application is misconceived, lacks merit, was brought with the malicious intention of denying the respondents their right as beneficiaries of the Estate of Karuga Mburia (deceased); further that the applicant has no children and the allegation of her child having been involved in an accident was false; and that the applicant has failed to provide for security.
8. I have considered the application, the affidavit in support, and submissions by the parties. The discretion I am called upon to exercise in determining this application is provided under rule 4 of the Court of Appeal Rules. The rule states:

“The court may, on such terms as it thinks 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 a reference in these Rules to any such time shall be construed as a reference to that time as extended.”



9. In the case of Muringa Company Ltd vs. Archdiocese of Nairobi Registered Trustees, Civil Application No. 190 of 2019, this Court expounded on the subject of the court's discretion under rule 4 by stating as follows:

“Some of the considerations, which are by no means exhaustive, in an application for extension of time include the length of the delay involved, the reason or reasons for the delay, the possible prejudice, if any, that each party stands to suffer, the conduct of the parties, the need to balance the interests of a party who has a decision in his or her favour against the interest of a party who has a constitutionally underpinned right of appeal, the need to protect a party's opportunity to fully agitate its dispute, against the need to ensure timely resolution of disputes; the public interest issues implicated in the appeal or intended appeal; and whether, prima facie, the intended appeal has chances of success or is a mere frivolity.” (Emphasis added)

10. This court has also stated that the reason(s) for the delay in filing an appeal or a record of appeal must be plausible and satisfactory. To this effect, this Court in Andrew Kiplagat Chemaringo vs. Paul Kipkorir Kibet [2018] eKLR stated:

“The law does not set out any minimum or maximum period of delay. All it states is that any delay should be satisfactorily explained. A plausible and satisfactory explanation for delay is the key that unlocks the court's flow of discretionary favour. There has to be valid and clear reasons, upon which discretion can be favourably exercisable.”

11. In this instance, I understand the applicant to be saying that the reasons for the delay are that she lives far from the court, it was expensive for her to check on the progress of the proceedings frequently, her child was involved in an accident and required her attention, and she was not made aware promptly when the proceedings were ready. Further, the applicant contends that she applied for the proceedings on time.

12. One of the necessary requirements for the court's consideration is that the explanation for the delay must be plausible and satisfactory, as stated in the case of Andrew Kiplagat Chemaringo vs. Paul Kipkorir Kibet (supra) that when the explanation is convincing and acceptable, 'it unlocks the flow of discretionary favor.' The applicant did not enclose the letter bespeaking the proceedings, and two things come to mind: the date the application was made and whether indeed, the application was made if at all, as no certificate of delay has been exhibited.

13. In addition, the applicant had a counsel on record; it has not been explained why, even though there was counsel, the applicant had to pursue the proceedings in difficult circumstances, which the respondents have indeed challenged. Notable also is that no medical records were attached to the affidavit to back this assertion.

14. I find the applicant's explanation neither plausible nor satisfactory. Indeed, the intended appeal appears as an afterthought. In the end, I decline to grant the extension sought. The application is, therefore, dismissed with costs.

**DATED AND DELIVERED AT NYERI THIS 19<sup>TH</sup> DAY OF DECEMBER, 2024.**

**ALI-ARONI**

.....

**JUDGE OF APPEAL**



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

Signed

**DEPUTY REGISTRAR**

