



**Muthike v Muthike (Civil Application E453 of 2022)  
[2023] KECA 142 (KLR) (17 February 2023) (Ruling)**

Neutral citation: [2023] KECA 142 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAIROBI  
CIVIL APPLICATION E453 OF 2022  
KI LAIBUTA, JA  
FEBRUARY 17, 2023**

**BETWEEN**

**LYDIAH WANJIKU MUTHIKE ..... APPLICANT**

**AND**

**NELIUS WANGUI MUTHIKE ..... RESPONDENT**

*(Being an application for extension of time to file and serve a Record of Appeal out of time against the Ruling and Orders of the High Court of Kenya at Nairobi (A. O. Muchelule, J.) delivered on 9th November 2021 in Succession Cause No. 1291 of 2019)*

**RULING**

1. The applicant, Lydia Wanjiku Muthike, seeks extension of time to file and serve her record of appeal out of time pursuant to rule 4 of this *Court's Rules*. Her Notice of Motion dated December 7, 2022 is supported by her annexed affidavit of her learned counsel, Festus Muteti, sworn on December 7, 2022. The grounds on which the application is made are that the impugned ruling was delivered on November 9, 2021; that the applicant's notice of appeal was lodged in good time on November 22, 2021; that counsel lodged his application for certified copies of the proceedings on November 23, 2021; that the proceedings were ready for collection on March 31, 2022; that a certificate of delay was issued to cover the period between November 23, 2021 and April 21, 2022; that the certificate of delay was ready for collection on July 8, 2022; that following the applicant's health complications that led to her evacuation and hospitalization in Namibia, her absence made it difficult for counsel to obtain further instructions concerning the appeal; and that the record of appeal was eventually uploaded on the virtual platform for assessment on July 18, 2022, but is yet to be duly filed.
2. It is noteworthy that, despite service of the Motion and the hearing notice dated February 3, 2023 advising the parties to file their written submissions, the respondent has not filed any replying affidavit or submissions in opposition to the applicant's Motion.



3. Even though the applicant has not filed any submissions on points of law in support of her application, I find that her Motion merits the orders sought. The same has been made without undue delay, the delay in filing and serving the record of appeal is not inordinate and, in any event, has been satisfactorily explained. Accordingly, I hereby order and direct that the applicant do file and serve her record of appeal within 14 days from the date hereof. The costs of this application shall abide the outcome of the appeal. It is so ordered.

**DATED AND DELIVERED AT NAIROBI THIS 17<sup>TH</sup> DAY OF FEBRUARY, 2023**

**DR. K. I. LAIBUTA**

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**JUDGE OF APPEAL**

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

*Signed*

**DEPUTY REGISTRAR**

