



**Muteti v Ragos Transing Limited & 2 others (Civil Application  
E262 of 2021) [2022] KECA 733 (KLR) (20 May 2022) (Ruling)**

Neutral citation: [2022] KECA 733 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAIROBI  
CIVIL APPLICATION E262 OF 2021  
S OLE KANTAI, JA  
MAY 20, 2022**

**BETWEEN**

**NICHOLAS WAMBUA MUTETI ..... APPLICANT**

**AND**

**GITENE JAMES ..... 1<sup>ST</sup> RESPONDENT**

**RAGOS TRANSING LIMITED ..... 2<sup>ND</sup> RESPONDENT**

**PETER KIRAGU GITHUKA ..... 3<sup>RD</sup> RESPONDENT**

*(Being an application for extension of time to file an Appeal and Record  
of Appeal against the Judgment of the High Court of Kenya at Nairobi  
(Mbogholi, J.) dated 19th December, 2019 in H.C.C.C. No. 194 of 2017))*

**RULING**

1. In the Motion brought under rule 4 of the [Court of Appeal Rules, 2010](#) the applicant, Nicholas Wambua Muteti applies for leave to file and serve record of appeal out of time and that costs incidental to the application abide the result of the application. In grounds in support of the Motion and in a supporting affidavit sworn by the applicant at Nairobi on 1st July, 2021 it is said amongst other things that the applicant filed a Notice of Appeal within the prescribed time and applied for proceedings of the trial court within time but appeal was not filed on time after Judgment had been delivered on December 19, 2019; that the High Court had upheld the Judgment of the subordinate court where the suit was dismissed; that the applicant, a resident of Makueni County, lost contact with his lawyers and could not travel to Nairobi due to the COVID-19 pandemic and that his claim arose from injuries suffered in a road traffic accident. He says that the intended appeal is arguable with high chances of success and that the suit in the subordinate court was dismissed on grounds that it was filed out of time even after he had obtained leave to file suit out of the time envisaged by [Limitation of Actions Act](#).



Also that due to the injuries suffered in the accident he was incapacitated and unable to pay fees for filing of an appeal.

2. I have noted Notice of Appeal dated January 6, 2020 to appeal against the whole Judgment of the High Court delivered on December 19, 2019.
3. I have also noted that the Registrar of this Court served a hearing notice on May 6, 2022 at 4.26 a.m. on Vincent Muia (muiaviny@yahoo.com) and Alfred Nyandieka (nyandiekaesq@yahoo.com) which advised of the hearing today and required the parties to file written submissions within time limited as advised to the parties. I have seen written submissions by M/S Muia VM & Company Advocates (for the applicant) but the respondents have not filed any submissions.
4. The applicant has explained how the accident occurred; his having filed suit in the subordinate court which was dismissed; his appeal to the High Court was also dismissed. The applicant relies on the case of *Muchugi Kiragu v James Muchai Kiragu & anor* [1998] eKLR for the proposition that this Court has on several occasions granted extension of time on the basis that an intended appeal is arguable and that it would be wrong to shut an intended applicant out of court and deny him the right of appeal.
5. The principles applicable in applications of this nature were well laid out in the oft-cited case of *Fakir Mohamed v Joseph Mugambi & 2 others* Civil Application No 332 of 2004; [2005] KECA 216 (KLR) that:

“The exercise of this Court’s discretion under Rule 4 has followed a well-beaten path since the stricture of “sufficient reason” was removed by amendment in 1985. As it is unfettered, there is no limit to the number of factors the court would consider so long as they are relevant. The period of delay, the reason for the delay (possibly) the chances of the appeal succeeding if the application is granted, the degree of prejudice to the respondent if the application is granted, the effect of the delay on public administration, the importance of compliance with time limits, the resources of the parties, whether the matter raises issues of public importance – are all relevant but not exhaustive factors: See *Mutiso v Mwangi*, Civil Application No. NAI. 255 of 1997 (ur), *Mwangi v Kenya Airways Limited* [2003] KLR 496, *Major Joseph Mwereri Igweta v Murika Methare & Attorney General* Civil Application No Nai 8 of 2000 (ur) and *Murai v Wainaina* (No. 4) 1982 KLR 38.”

6. There is also a duty imposed on the Court by Sections 3A and 3B of the *Appellate Jurisdiction Act* to ensure that the factors considered are consonant with the overriding objectives of civil litigation to ensure just, expeditious, proportionate and affordable resolution of disputes before the Court – *City Chemist (Nbi) & anor v Oriental Commercial Bank Limited* Civil Application Nai 302 of 2008 (ur).
7. The applicant here says that after Judgment was delivered on 19th December, 2019 he lodged a Notice of Appeal on time but thereafter he was held up in rural Makeni unable to travel to Nairobi due to financial constraints and the outbreak of COVID-19 pandemic which affected many operations. Notice of Appeal was lodged on time and proceedings were applied for on time to enable filing of an appeal. I do not know whether the appeal, which will be a second appeal, has any chance of success but I am prepared to overlook that fact in this application. The respondents have not responded to the application and I do not know their position in absence of a response. The applicant was injured in a road traffic accident; he was granted leave to file suit out of time but his suit was eventually dismissed for reasons stated in the Judgment of the trial court and an appeal to the High Court was also dismissed. He wants to have another chance in a second appeal. Let him have it. I allow the Motion. Let the record of appeal be filed within 30 days of today. Costs of the Motion will be in the appeal.

**DATED AND DELIVERED AT NAIROBI THIS 20TH DAY OF MAY, 2022.**



**S. ole KANTAI**

.....

**JUDGE OF APPEAL**

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

*Signed*

**DEPUTY REGISTRAR**

