



**Njeri Kibiru & 4 others v Ali (Civil Application 77 of 2020)  
[2022] KECA 1015 (KLR) (23 September 2022) (Ruling)**

Neutral citation: [2022] KECA 1015 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NYERI  
CIVIL APPLICATION 77 OF 2020  
K M'INOTI, JA  
SEPTEMBER 23, 2022**

**BETWEEN**

**MARGARET NJERI KIBIRU ..... 1<sup>ST</sup> APPLICANT  
DAMARIS WANGECHI GICHEHA ..... 2<sup>ND</sup> APPLICANT  
DAVID MURIITHI GICHEHA ..... 3<sup>RD</sup> APPLICANT  
JOSEPHAT GICHURU NYAGUANJI ..... 4<sup>TH</sup> APPLICANT  
JASAN KANJA NYAGUANJI ..... 5<sup>TH</sup> APPLICANT**

**AND**

**MARY WANGECHI ALI ..... RESPONDENT**

*(Application for extension of time to file a record of appeal out of time against the Judgment and Decree of the Environment & Land Court of Kenya at Nyeri (Waithaka, J.) dated 26th February 2019 in ELCC No. 83 of 2016)*

**RULING**

1. The applicants seek extension of time to file a record of appeal out of time against the judgement and decree of the Environment and Land Court at Nyeri (Waithaka, J.), dated February 26, 2019. The application is dated August 10, 2019 and is taken out under rule 4 of the [Court of Appeal Rules](#) supported by two affidavits sworn on the same date by the 5<sup>th</sup> applicant, Jason Kanja Nyaguanji and H. K. Ndirangu, Advocate. Mr Nyaguanji deposes that the applicants' advocate, Mr H. K. Ndungu was sick and unable to attend to his matters most of 2020. He adds that by the time the advocate received the certificate of delay, the period for lodging the record of appeal had expired. He avers further that the intended appeal has chances of success; that the respondent stands to suffer no prejudice if the application is allowed; and that it is fair and just to allow the application and extend time.



2. For his part Mr. Ndirangu deposes that the applicants instructed him to act for them on July 2, 2019 upon which he filed a notice of appointment of advocate on July 5, 2019. Upon perusing the court file, he noticed that the applicants' previous advocates had filed a notice of appeal on March 4, 2019. He applied for and obtained a certificate of delay on September 11, 2019 but thereafter he fell ill and was not able to attend to his matters until July 2020.
3. From the draft memorandum of appeal, the intended appeal concerns a parcel of land known as Gatarakwa/Gatarakwa Block 3/523 which the applicants allege the court erroneously treated as having been re-parcelled. Among the issues the applicants intend to urge in the intended appeal is that the said parcel of land was affected without hearing the registered owner and that the suit was filed against a deceased defendant.
4. In their written submissions dated July 14, 2022, the applicants reiterate the above background and urge me to extend time to enable them lodge their intended appeal. The respondent, although duly served with hearing notice, did not file either a replying affidavit or written submission. I shall accordingly treat the application for extension of time as unopposed.
5. Other than the caveat that it should be exercised judiciously, the discretion to extend time under rule 4 of the *Court of Appeal Rules* is wide and unfettered. Rule 4 is intended to ameliorate hardship and injustice where a genuine lapse or blunder has made it difficult to observe the time set by the rules. The factors that the court takes into account in an application for extension of time were stated as follows in *Fakir Mohamed v Joseph Mugambi & 2 others*, CA No Nai 332 of 2004  

“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 ...”
6. From the record, the judgment in question was rendered on February 25, 2019. The notice of appeal was filed on 4th March, which was within the prescribed 14 days from the date of delivery of the judgment. The applicants also applied for certified copies of the judgment and proceedings on March 5, 2019, which again was within the prescribed time, and received the proceedings on May 2, 2019. In July 2019 the applicants changed their advocates to the current one who applied for a certificate of delay but the same was not availed until September 11, 2019. Thereafter, Mr Ndirangu has deposed that he fell sick and was out of the office for most of 2020.
7. The record shows that the notice of appeal and the letter bespeaking proceedings were filed within the prescribed time. The delay occurred in the process of change of advocates and the subsequent illness of the new advocate. Although I would have considered the delay inordinate, I accept the explanation for the delay, particularly taking into account that the respondent has not controverted that explanation. From the draft memorandum of appeal, I am not able to say the intended appeal, which involves a parcel of land, is frivolous. Again, in the absence of a response to the application by the respondent, I have no material before me on the basis of which I can conclude that the respondent stands to suffer more prejudice than the applicants if I allow this application.



8. Persuaded as I am that the application before me has merit, I allow the same and direct the applicants to file and serve the record of appeal within 21 days from the date of this ruling. Costs of the application shall abide the outcome of the appeal. It is so ordered.

**DATED AND DELIVERED AT NAIROBI THIS 23<sup>RD</sup> DAY OF SEPTEMBER, 2022**

**K. M'INOTI**

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**JUDGE OF APPEAL**

I certify that this is a true copy of the original

Signed

**DEPUTY REGISTRAR**

