



**Kimani v Sigona Jua Kali Association & 4 others (Application E005 of 2025) [2025] KESC 24 (KLR) (Civ) (16 May 2025) (Ruling)**

Neutral citation: [2025] KESC 24 (KLR)

**REPUBLIC OF KENYA  
IN THE SUPREME COURT OF KENYA**

**CIVIL**

**APPLICATION E005 OF 2025**

**MK KOOME, CJ & P, PM MWILU, DCJ & VP, SC WANJALA, I LENAOLA & W OUKO, SCJJ**

**MAY 16, 2025**

**BETWEEN**

**JANE WANGECHI KIMANI ..... APPLICANT**

**AND**

**SIGONA JUA KALI ASSOCIATION ..... 1<sup>ST</sup> RESPONDENT**

**COUNTY GOVERNMENT OF KIAMBU ..... 2<sup>ND</sup> RESPONDENT**

**LAND CONTROL BOARD ..... 3<sup>RD</sup> RESPONDENT**

**REGISTRAR OF LANDS ..... 4<sup>TH</sup> RESPONDENT**

**THE ATTORNEY GENERAL ..... 5<sup>TH</sup> RESPONDENT**

*(Being an application for extension of time to lodge and transmit a Notice of Appeal to the Supreme Court & Stay of execution of the judgement, decree and consequential orders of the the Environment and Land Court, Thika, in ELC Case No. 131 of 2017)*

**Principles that a court should consider in exercise of its discretion on extension of time**

*The application sought for the extension of time of time for filing a notice of appeal. The court highlighted the principles that a court should consider in exercise of its discretion on extension of time. The court reiterated that parties had a responsibility to show interest in and to follow up on their cases even when they were represented by counsel.*

Reported by Kakai Toili

**Civil Practice and Procedure** – appeals – timelines for filing appeals – extension of timelines – extension of time to file a notice of appeal - what were the principles that a court should consider in exercise of its discretion on extension of time.



*Civil Practice and Procedure – suits – parties to a suit – responsibilities of parties to a suit - whether parties to a suit had a responsibility to follow up on their cases even when they were represented by counsel.*

### **Brief facts**

The application sought for among other orders; that time be extended for admitting a lodged notice of appeal dated January 10, 2025 against the decision of the Court of Appeal; and that there be a stay of execution of the judgment and decree of the Environment and Land Court (the trial court) pending the hearing and determination of the instant application.

The applicant submitted that she was the registered proprietor of the suit property which she later subdivided, sold and transferred to 30 families. The applicant further submitted that despite her alleged ownership of the suit property, she did not succeed in asserting her claim at the trial court and at the Court of Appeal, and was thus on the verge of losing her property. The applicant attributed her failure to file the notice of appeal on time to the conduct of her previous advocates who failed to notify her of, and she only became aware of the Court of Appeal decision in mid- January 2025.

The respondent objected to the application and submitted that the applicant had not satisfactorily explained the delay in filing the notice of appeal. Further, that the applicant had not provided evidence as to how she became aware of the decision of the Court of Appeal.

### **Issues**

- i. What were the principles that a court should consider in exercise of its discretion on extension of time?
- ii. Whether parties to a suit had a responsibility to follow up on their cases even when they were represented by counsel.

### **Held**

1. The principles that a court should consider in exercise of its discretion on extension of time were as follows:
  1. Extension of time was not a right of a party. It was an equitable remedy that was only available to a deserving party at the discretion of the court;
  2. a party who sought extension of time had the burden of laying a basis thereof to the satisfaction of the court;
  3. whether the court should exercise the discretion to extend time, was a consideration to be made on a case to case basis;
  4. whether there was a reasonable reason for the delay and the delay should in any event be explained to the satisfaction of the court;
  5. whether there would be any prejudice suffered by the respondent if the extension was granted;
  6. whether the application had been brought without undue delay; and
  7. whether in certain cases, like election petitions, public interest should be a consideration for extending time.
2. The secretary of the 1<sup>st</sup> respondent had been a party to the proceedings on behalf of the 1<sup>st</sup> respondent since the trial stage and had consistently been described as the secretary of the 1<sup>st</sup> respondent without any objection by the applicant. He possessed the requisite capacity to swear the replying affidavit.
3. Rule 36(1) of the Supreme Court Rules provided that a person who intended to make an appeal to the court shall file a notice of appeal within 14 days from the date of judgment or ruling which was the subject of appeal. The instant application was filed on March 20, 2025 which was three months after the delivery of the Court of Appeal judgment and two months after the notice was dated but not filed.
4. The applicant did not provide any evidence to substantiate the claim that she became aware of the Court of Appeal's determination in mid-January 2025.
5. The applicant attributed her failure to file the notice of appeal within the prescribed time to the alleged inaction of her former advocates, specifically their failure to update her on the progress of the case and ultimately delivery of Court of Appeal judgment. She had however not produced any correspondence



or documentation demonstrating her attempts to inquire into the status of her matter, which would support her assertions against her former legal representatives. Parties had a responsibility to show interest in and to follow up on their cases even when they were represented by counsel, and it did not matter whether the party was literate or not.

6. There was an unexplained delay of approximately two months from the time the applicant purportedly became aware of the appellate court's decision to the date of filing the instant application. No satisfactory explanation had been offered for the delay.
7. The dispute before both the trial court and the Court of Appeal was confined to the issue of ownership of the suit property. At no point did the parties raise any issues concerning the interpretation or application of the Constitution. The applicant failed to demonstrate that the proceedings before the superior courts involved any constitutional questions or took a trajectory necessitating constitutional interpretation or application. To allow any extension of time without that issue being addressed would only take the court on an expedition of no useful purpose.
8. The notice of appeal ought to have been filed on or before January 4, 2025, the instant application had instead been filed 62 days after that date. No satisfactory explanation had been provided for such delay. The prayers for a stay of execution of the judgment decree of the trial court was inherently misplaced. That was because the intended appeal ought to be directed and filed against the decision of the Court of Appeal, not the trial court. Moreover, that prayer was contingent upon the grant of leave to file the notice of appeal out of time, a relief the court declined.

*Application dismissed; the 1<sup>st</sup> respondent awarded costs of the application.*

#### **Citations**

##### **Cases**

1. Agatha v Azad & 3 others Application 11 (E020) of 2021; [2022] KESC 1 (KLR) — (Followed)
2. Gaciani & 11 others v Kimanga & another Application E004 of 2023; [2023] KESC 23 (KLR) — (Followed)
3. Hermanus Phillipus Steyn v Giovanni Gneccchi-Ruscone Civil Application 4 of 2012; [2012] KECA 259 (KLR) — (Followed)
4. Kithangari & 4 others v Mutahi Application E024 of 2024; [2024] KESC 72 (KLR) — (Followed)
5. Njihia; Esther Wamaitha & 2 others v Safaricom Ltd Civil Case 62 of 2011; [2014] KEHC 6699 (KLR) — (Follo)
6. Rai & 3 others v Rai & 5 others Petition 4 of 2012; [2013] KESC 21 (KLR) — Applied
7. Salat v Independent Electoral and Boundaries Commission & 7 others Application 16 of 2014; [2014] KESC 12 (KLR) — (Followed)
8. Wachira Karani v Bildad Wachira Civil Suit 101 of 2011; [2016] KEHC 6334 (KLR) — (Explained)
9. Waruhiu v Munene & another Civil Application 18 of 2020; [2021] KESC 42 (KLR) — (Followed)

##### **Statutes**

1. Constitution of Kenya, 2010 article 163 – (Interpreted)
2. Supreme Court Rules, 2020 (cap 9B Sub Leg) — rule 36 — (Interpreted)

##### **Advocates**

*N/A*

## **RULING**

Representation

Eric Naibei & Mr Mbito for the applicant (Mbito & Co Advocates)



Mr Edwin Mugu for the 1st respondent (EN Mugu & Co Advocates)

N/A for the 2nd respondent

Ms Mwalozi for the 3rd to 5th respondents (Office of the Attorney General)

1. Upon perusing the notice of motion dated 6 February 2025 and filed before this court on March 20, 2025, by the applicant, seeking orders inter alia –
  - a. That this honourable court be pleased to grant the applicant leave to file a notice of appeal dated 10 January 2025 out of time over the Judgement delivered on 20 December 2024 at the Court of Appeal in Civil Appeal No 315 of 2019.
  - b. That time be extended for admitting a lodged notice of appeal dated 10<sup>th</sup> January 2025 against the decision of the Court of Appeal in Civil Appeal No 315 of 2019.
  - c. That there be a stay of execution of the judgement [and] decree of the Environment and Land Court Thika in ELC Case No 131 of 2017 pending the hearing and determination of this application.
2. Taking into account the affidavit in support of the motion sworn by Jane Wangechi Kimani and written submissions both dated 7 March 2025 and filed on 20 March 2025 to the effect that; the applicant is the registered proprietor of all that parcel of land known as Sigona/934 which she later subdivided into Sigona/930-965; she later sold and transferred these parcels to 30 families, who have occupied the land for over 20 years; the property also holds an administration block with a Chief's Office and a Police Station situated thereon; despite her alleged ownership of the said parcel of land, the applicant did not succeed in asserting her claim at the trial court and at the Court of Appeal, and is thus on the verge of losing her property; she attributes her failure to file the notice of appeal on time to the conduct of her previous advocates who failed to notify her of, and she only became aware of the Court of Appeal decision in mid- January 2025; that, through her current advocates on record, she lodged a notice of appeal at the Court of Appeal but the same was rejected by the Deputy Registrar for being filed out of time; her intended appeal has high chances of success and relies on this court's decisions in *Mutheu Agatha v Raheem & others* SC Application No 11 (E020) of 2021 and *Salat v Independent Electoral and Boundaries Commission & 7 others* [2014] KESC 12 (KLR) in reference to the court's unfettered discretionary powers to extend time; and further relies on the superior courts' decisions in *Esther Wamaittha Njibia & 2 others v Safaricom Ltd* [2024] eKLR as well as *Wachira Karani v Bildad Wachira* [2016] eKLR to infer the fundamental duty of the court to do justice between the parties; and
3. Upon considering the respondent's grounds of objection, replying affidavit sworn by John Kamau Ndere, Secretary of the 1<sup>st</sup> respondent and submissions all dated 16 March 2025 and filed on 18 March 2025 wherein it submits that the applicant has not explained, satisfactorily, the delay in filing the notice of appeal between 20 December 2024 and 6 March 2025 when the application was filed; the applicant has not provided evidence as to how she became aware of the decision of the Court of Appeal from a relative, and that there is no evidence that the said notice of appeal was lodged and rejected in the Court of Appeal Registry since filing and communication at the Court of Appeal are not done orally. Further, that the applicant has not shown the limb under article 163 of the *Constitution* that the intended appeal is to be brought and therefore it is a non-starter. The 1<sup>st</sup> respondent furthermore cites the decisions in *Nick Salat v Independent Electoral and Boundaries Commission & 7 others* [2014] KESC 12 (KLR) and *Kitbangari & 4 others v Mutahi* [2024] KESC 72 (KLR) to highlight the factors to be considered in an application for extension of time. *Hermanus Phillips Steyn vs Giovanni Gneccchi Ruscone* Supreme Court Application No 4 of 2012 is also cited to implore the need to seek certification from the Court of Appeal where a matter of general public importance is involved in any intended appeal to this court



and *Gaciani & 11 others v Kimanga & another* (Application E004 of 2023) [2023] KESC 23 (KLR) has also been offered by the 1<sup>st</sup> respondent to submit that, whereas mistakes of an advocate ought not to be visited upon a litigant, there must be cogent and credible evidence for such a reason to be acceptable; and

4. Upon also considering the applicant's rejoinder affidavit dated 25 March 2025 wherein she casts doubts as to the competence of John Kamau Ndere to swear the affidavit on behalf of the 1<sup>st</sup> respondent and also notes that the signatures sought in support of his capacity were forged and only relate to John Kamau Ndere's children. She further states that the decision of the trial court did not grant the 1<sup>st</sup> respondent the suit property or found it to be the legal owner; and that she stands most aggrieved by the determination of the Court of Appeal. She concludes by submitting that the application and intended appeal raise constitutional issues requiring this court's intervention and there is reasonable fear of her being committed to civil jail if a stay order is not granted; and
5. Bearing in mind the provisions governing the filing of a notice of appeal set out under rule 36 of the *Supreme Court Rules, 2020*, computation and extension of time provided under rule 15 of the said *Rules* and this court's decision in *Salat v Independent Electoral and Boundaries Commission & 7 others* [2014] KESC 12 (KLR) wherein we set out the principles that a court should consider in exercise of its discretion on extension of time, as follows:
  - i. Extension of time is not a right of a party. It is an equitable remedy that is only available to a deserving party at the discretion of the court;
  - ii. A party who seeks extension of time has the burden of laying a basis thereof to the satisfaction of the court;
  - iii. Whether the court should exercise the discretion to extend time, is a consideration to be made on a case to case basis;
  - iv. Whether there is a reasonable reason for the delay and the delay should in any event be explained to the satisfaction of the court;
  - v. Whether there will be any prejudice suffered by the respondent if the extension is granted;
  - vi. Whether the application has been brought without undue delay; and
  - vii. Whether in certain cases, like election petitions, public interest should be a consideration for extending time.
6. And noting the pleadings and submission on record, we now opine and determine as follows:
  - i. John Kamau Ndere has been a party to these proceedings on behalf of the 1<sup>st</sup> respondent since the trial stage and has consistently been described as the secretary of the 1<sup>st</sup> respondent without any objection by the applicant. We are therefore satisfied that he possesses the requisite capacity to swear the replying affidavit.
  - ii. Rule 36(1) of the *Supreme Court Rules* provides that a person who intends to make an appeal to this court shall file a notice of appeal within fourteen (14) days from the date of judgment or ruling which is the subject of appeal. We have in that regard considered the time taken from the delivery of the Court of Appeal's decision to the filing of the present application. The Court of Appeal rendered its decision on 20 December 2024 and the applicant's draft notice of appeal is dated January 2025. The current application was filed on 10 March 20, 2025 which is three months after the delivery of the Court of Appeal judgment and two months after the said notice was dated but not filed.



- iii. The applicant asserts that she became aware of the Court of Appeal's determination in mid-January 2025. However, she has not provided any evidence to substantiate this claim. She further attributes her failure to file the notice of appeal within the prescribed time to the alleged inaction of her former advocates, specifically their failure to update her on the progress of the case and ultimately delivery of Court of Appeal judgment. She has however not produced any correspondence or documentation demonstrating her attempts to inquire into the status of her matter, which would support her assertions against her former legal representatives. In that context, in *George Kang'ethe Waruhiu v Esther Nyamweru Munene & another* Civil Application No 18 of 2020 [2021] ekLR we stated that it is not enough for a party to simply blame the advocates on record for all manner of transgressions. Courts have always emphasized that parties have a responsibility to show interest in and to follow up on their cases even when they are represented by counsel, and it does not matter whether the party is literate or not.
  - iv. Additionally, there is an unexplained delay of approximately two months from the time the applicant purportedly became aware of the appellate court's decision to the date of filing the present application. No satisfactory explanation has been offered for this delay.
  - v. We further observe that the dispute before both the trial court and the Court of Appeal was confined to the issue of ownership of parcel number LR Sigona/934. At no point did the parties raise any issues concerning the interpretation or application of the Constitution, a position taken and explained by the 1<sup>st</sup> respondent without a satisfactory answer by the applicant. The applicant has equally failed to demonstrate that the proceedings before the superior courts involved any constitutional questions or took a trajectory necessitating constitutional interpretation or application. To allow any extension of time without this issue being addressed would only take the court on an expedition of no useful purpose.
  - vi. Noting that the notice of appeal ought to have been filed on or before 4 January 2025, the instant application has instead been filed 62 days after the said date. No satisfactory explanation has been provided for such delay. We further observe that the prayers for 'a stay of execution of the judgement decree of the Environment and Land Court Thika in ELC Case No 131 of 2017' is inherently misplaced. This is because the intended appeal ought to be directed and filed against the decision of the Court of Appeal, not the trial court. Moreover, this prayer is contingent upon the grant of leave to file the notice of appeal out of time, a relief we have declined. Accordingly, we find no merit in the application before us and hereby dismiss it.
  - vii. The 1<sup>st</sup> respondent, being the successful party, is entitled to the costs of the application in line with the principle that costs follow the event, as articulated in *Jasbir Singh Rai & 3 others v Tarlochan Singh Rai Estate & 4 Others*; SC Petition No 4 of 2012 [2013] eKLR.
7. Consequently and for the reasons afore-stated, we make the following orders:
- i. The applicant's notice of motion dated 6 February 2025 and filed on 20 March 2025 is hereby dismissed.
  - ii. The 1<sup>st</sup> respondent is hereby awarded costs of the application as against the applicant.

It is so ordered.

**DATED AND DELIVERED AT NAIROBI THIS 16<sup>TH</sup> DAY OF MAY, 2025.**

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**M.K. KOOME**



**CHIEF JUSTICE & PRESIDENT OF THE SUPREME COURT OF KENYA**

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**P.M. MWILU**

**DEPUTY CHIEF JUSTICE & VICE PRESIDENT OF THE SUPREME COURT KENYA**

.....

**S.C. WANJALA**

**JUSTICE OF THE SUPREME COURT**

.....

**I.LENAOLA**

**JUSTICE OF THE SUPREME COURT**

.....

**W. OUKO**

**JUSTICE OF THE SUPREME COURT**

I certify that this is a true copy of the original

**REGISTRAR**

**SUPREME COURT OF KENYA**

