



**Gabriel v Mali & another (Civil Appeal E101 of 2025)
[2025] KECA 1510 (KLR) (19 September 2025) (Ruling)**

Neutral citation: [2025] KECA 1510 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NYERI
CIVIL APPEAL E101 OF 2025
JM NGUGI, JA
SEPTEMBER 19, 2025**

BETWEEN

GRACE TUNU GABRIEL APPELLANT

AND

ROBE SHITO MALI 1ST RESPONDENT

LAND REGISTRAR ISIOLO-MARSABIT 2ND RESPONDENT

*(Being an Application for leave to issue, serve Notice of Appeal out of time
to appeal against the Orders of the Environment and Land Court at Isiolo,
(Mboya, J.) dated 17th February, 2025 in Misc. Appl. No. E007 of 2024)*

RULING

1. Grace Tunu Gabriel, the Applicant herein, first approached the Principal Magistrate's Court at Marsabit vide a plaint dated 3rd October, 2019 suing the respondents herein primarily for orders of rectification of the land register over the acreages to land parcels No. Marsabit/Mountain/1352 and Marsabit/Mountain/1353. That suit was Marsabit SRMCC ELC No. 11 of 2019. After a full trial, the trial court (Hon. Mbayaki Wafula) dismissed the Applicant's suit with costs in a judgment delivered on 25th April 2022.
2. The Applicant did not timeously file an appeal to the Environment and Land Court. She attributes the delay in filing the appeal to the inaction of her former counsel and emphasizes her constitutional right to fair hearing and access to justice under Articles 48 and 159(2) of *the Constitution*. Consequently, she approached the ELC at Isiolo vide a Notice of Motion dated 26th September 2024 in Misc. ELC Civil Application No. E007 of 2024 seeking enlargement of time to file an appeal in that court. That application was dismissed in a ruling dated 17th February, 2025 by Oguttu Mboya, J. who found that no sufficient cause had been demonstrated for the court to exercise its discretion to enlarge time.



3. The Applicant was aggrieved by that ruling and sought to appeal against it. She obtained leave of the ELC on 26th March 2025 to appeal against the ruling of 17th February 2025. Meanwhile, she had lodged a Notice of Appeal dated 24th February 2025 and requested for proceedings vide counsel's letter dated 18th February, 2025, which was copied to the respondents' counsel hence entitling the Applicant to rely on the proviso under Rule 84(2) of the Court of Appeal Rules.
4. The Applicant is now before me seeking orders that she be granted leave to issue and serve a Notice of Appeal out of time as well as enlargement of time for filing the record of appeal. The application is dated 18th July 2025 and is supported by the affidavit of Grace Tunu Gabriel sworn on the same date. She explains that she only obtained the proceedings from the court on 1st July 2025, hence the delay in filing.
5. In submissions, counsel for the Applicant reiterated that the discretion under Rule 4 is unfettered and that the court considers, among other factors, the length of delay, reasons for delay, chances of success, prejudice to the respondent, and public importance of the matter. The Applicant urged that the delay was attributable to her former counsel's inaction and the late supply of proceedings. She maintained that both the intended appeal against the ruling of 17th February, 2025 and the primary appeal against the judgment of 25th April 2022, are arguable. Against the ruling of 17th February, 2025, the Applicant argues that the learned Judge failed to judicially exercise his discretion and arrived at a wrong conclusion. She is persuaded that the learned Judge failed to properly consider the appropriate principles in exercising discretion whether to enlarge time.
6. The Applicant also invoked Articles 48 and 159(2) of *the Constitution* and the principle that justice should be administered without undue regard to technicalities.
7. The Respondent neither filed a replying affidavit nor submissions.
8. Rule 4 of the Court of Appeal Rules, 2022 provides:

“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. The guiding principles were stated in *Leo Sila Mutiso v Rose Hellen Wangari Mwangi* [1999] 2 EA 231:

“It is now well settled that the decision whether or not to extend the time for appealing is essentially discretionary. It is also well settled that in general the matters which this Court takes into account in deciding whether to grant an extension of time are, first the length of the delay; secondly, the reason for the delay; thirdly (possibly), the chances of the appeal succeeding if the application is granted; and, fourthly, the degree of prejudice to the respondent if the application is granted.”
10. I have considered the application, the grounds advanced, and the submissions by counsel. The delay here is quite short – given that what is sought to be challenged is the ruling dated 17th February, 2025. The delay has been satisfactorily explained in terms of the late supply of proceedings. The Applicant has demonstrated promptitude upon receipt of proceedings.
11. The intended appeal cannot be said to be frivolous. The appeal challenges the exercise of discretion of the learned Judge in refusing to enlarge time to file an appeal. The subject matter is land; a subject



matter controversies over which to the best extent courts have a policy to attempt to resolve on their merits. The Respondent has not opposed the application and no prejudice has been shown that would be suffered if time is enlarged.

12. In the circumstances, and guided by the principles in *Leo Sila Mutiso (supra)*, I am persuaded to exercise my discretion in favour of the Applicant.
13. Accordingly, I allow the application dated 18th July, 2025. The time for lodging and serving the Notice of Appeal as well as for filing the record of appeal is hereby enlarged. The Applicant shall file and serve both the Notice of Appeal and the Record of Appeal within fourteen (14) days of the date of this ruling.
14. Costs of the application shall abide the outcome of the appeal.

DATED AND DELIVERED AT NYERI THIS 19TH DAY OF SEPTEMBER, 2025.

JOEL NGUGI

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JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR

