



**Njagi (Suing as the Legal Representative of the Late John Njagi
Gitari) & another v Ombati & 2 others (Civil Appeal (Application)
E109 of 2025) [2025] KECA 2182 (KLR) (15 December 2025) (Ruling)**

Neutral citation: [2025] KECA 2182 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAKURU
CIVIL APPEAL (APPLICATION) E109 OF 2025
PM GACHOKA, JA
DECEMBER 15, 2025**

BETWEEN

**MILKA WANGARI NJAGI (SUING AS THE LEGAL REPRESENTATIVE OF
THE LATE JOHN NJAGI GITARI) 1ST APPLICANT**

DANIEL GITARI NJAGI 2ND APPLICANT

AND

HON SAMSON OMWANZA OMBATI 1ST RESPONDENT

MICHAEL KAHONO WAICHUHI 2ND RESPONDENT

LAND REGISTRAR NAIVASHA 3RD RESPONDENT

RULING

1. By Notice of Motion dated 23rd October 2025, the applicants have invoked rules 4, 39, 43, 44 and 45 of the *Court of Appeal Rules* seeking to have them appeal out of time. The applicants further seek to have this Court deem the draft notice of appeal as duly filed.
2. The application is supported by the grounds on its face and the supporting affidavit of the 1st applicant. The facts giving rise to the application are that Oundo, J., in her ruling dated 25th September in ELC Cause No. E013 of 2025, delivered a ruling striking out the applicants' Notice of Motion.
3. The applicants are aggrieved with those findings. They filed their notice of appeal on 8th October 2025. However, the applicants' counsel observed on 9th October that the said notice of appeal had not been signed. However, they were outside the statutory timelines to file an executed one.
4. The applicants urged this Court to allow the application for the following reasons: the applicants had an arguable appeal with high chances of success as demonstrated in their draft memorandum of appeal;



no prejudice would befall the respondent if the orders sought are granted; and it was in the interest of justice that the application be allowed.

5. The application favored no response from the respondents. The application was canvassed by way of written submissions. In their written submissions dated 3rd November 2025, the applicants urged this Court to allow the application as prayed.
6. I have considered the application, the affidavit in support and the annexures thereto, examined the written submissions and analyzed the law. The applicants seek for extension of time to file their notice of appeal out of time. Given the discretionary nature of this powers donated under rule 4 of this Court's rules, certain principles have been enunciated by this Court in determining whether to allow or dismiss an application of this nature. In *Paul Wanjobi Mathenge vs. Duncan Gichane Mathenge* [2013] eKLR, the Court gave the following yardstick:

“The discretion under Rule 4 is unfettered, but it has to be exercised judicially, not on whim, sympathy or caprice. I take note that in exercising my discretion I ought to be guided by consideration of the factors stated in previous decisions of this Court including, but not limited to, the period of delay, the reasons for the delay, the degree of prejudice to the respondent and interested parties if the application is granted, and whether the matter raises issues of public importance.”

7. Is the application qualified? The applicants explained that they are dissatisfied with the ruling dated 25th September 2025 in ELC Cause No. E013 of 2025, striking out their Notice of Motion. Aggrieved by those findings, they filed their notice of appeal on 8th October 2025. However, the applicants' counsel observed on 9th October that the said notice of appeal had not been signed. Unfortunately, they were outside the statutory timelines to file an executed one.
8. I find that the applicants have satisfactorily explained the delay, which in this Court's view does not amount to inordinate delay. The application was lodged less than a month after the impugned decision was delivered. I therefore see no reason why the applicants should not benefit from the exercise of this Court's discretion. Accordingly, I direct the applicants to file their notice of appeal within 14 days from the date of this order.

DATED AND DELIVERED AT NAKURU THIS 15TH DAY OF DECEMBER 2025.

M. GACHOKA C.Arb, FCIArb.

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JUDGE OF APPEAL

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

Signed.

DEPUTY REGISTRAR

