



REPUBLIC OF KENYA



**KENYA LAW**  
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**Kimondo v Igoki & another (Civil Application E078 of 2025)  
[2025] KECA 1492 (KLR) (19 September 2025) (Ruling)**

Neutral citation: [2025] KECA 1492 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NYERI  
CIVIL APPLICATION E078 OF 2025  
JM NGUGI, JA  
SEPTEMBER 19, 2025**

**BETWEEN**

**ALEX MWANGI KIMONDO ..... APPLICANT**

**AND**

**PRISCILLA IGOKI ..... 1<sup>ST</sup> RESPONDENT**

**LUCY KAREMA ..... 2<sup>ND</sup> RESPONDENT**

*(Being an Application for leave to file and serve Record of Appeal out of time against the Judgment and decree of the Environment and Land Court at Nanyuki, (Bor, J.) dated 19th November, 2024 in ELCA No. E009 of 2023)*

**RULING**

1. Before me is a Notice of Motion dated 20<sup>th</sup> May, 2025 brought under Rule 4 and Rule 89 of the Court of Appeal Rules, 2022. The applicant seeks leave of this Court to file a memorandum and record of appeal out of time against the judgment of the Environment and Land Court at Nanyuki in ELCA No. E009 of 2023 delivered on 9<sup>th</sup> November, 2024. He further prays that the draft memorandum of appeal annexed be deemed as duly filed.
2. The application is supported by the affidavit of the applicant, and is opposed through a replying affidavit by the 1<sup>st</sup> respondent dated 28<sup>th</sup> May, 2025. Both parties filed written submissions which I have considered.
3. The applicant explains that a notice of appeal was timeously filed on 25<sup>th</sup> November, 2024, six days after delivery of judgment. He was thereafter required to file the memorandum and record of appeal within sixty days, by 15<sup>th</sup> February, 2025. He attributes the failure to comply with that timeline to difficulties in obtaining typed proceedings and a certificate of delay from the trial court.



4. According to the applicant, his counsel wrote to the court on several occasions — 25<sup>th</sup> November, 2024, 18<sup>th</sup> December, 2024, 20<sup>th</sup> January, 2025, 27<sup>th</sup> January, 2025, 11<sup>th</sup> February, 2025 and 30<sup>th</sup> April, 2025 — seeking clarification and a certificate of delay. The proceedings were eventually supplied on 24<sup>th</sup> January, 2025, but were dated 13<sup>th</sup> December, 2024. He contends that this discrepancy caused confusion, and despite diligent follow-up, no certificate of delay was forthcoming. He submits that the delay was, therefore, neither deliberate nor inordinate, but occasioned by factors beyond his control.
5. On the merits, the applicant submits that his intended appeal is arguable, as the learned Judge erred in cancelling his title to parcel Daiga/Umande Block 2/3939 (Mwireri) and vesting it in the 1<sup>st</sup> respondent without proof of her entitlement, contrary to sections 26(1) and 80(1) of the [Land Registration Act](#). He also challenges the order for exchange of parcels 3939 and 3940, contending that the 1<sup>st</sup> respondent had not proved ownership of parcel 3940.
6. The 1<sup>st</sup> respondent opposes the motion, contending that it is misconceived and lacks merit. She argues that the applicant has not met the threshold for extension of time under Rule 4 of the Court of Appeal Rules.
7. Citing *Leo Sila Mutiso v Rose Hellen Wangari Mwangi* [1999] 2 EA 231, the respondent stresses that the Court must consider four factors: the length of delay, the reason for delay, the chances of the appeal succeeding, and the prejudice to the respondent.
8. On delay, the respondent notes that the judgment was delivered on 19<sup>th</sup> November, 2024, and proceedings were ready for collection by 6<sup>th</sup> December, 2024, as communicated by the Deputy Registrar by email. The applicant, in fact, collected them on 24<sup>th</sup> January, 2025. She argues that the present motion was filed six months after the notice of appeal was filed, and that delay is inordinate and inexcusable.
9. On reasons, the respondent submits that no plausible explanation has been given, since proceedings were already available in December 2024. She relies on *Bi-Mach Engineers Ltd v James Kahoro Mwangi* [2011] eKLR, where this Court held that inaction by counsel is not an excusable mistake, and on *Andrew Kiplagat Chemaringo v Paul Kipkorir Kibet* [2018] eKLR, where it was emphasized that a plausible explanation is the key to unlocking discretion.
10. Turning to the merits of the appeal, the 1<sup>st</sup> respondent submits that the intended appeal is not arguable. She contends that the trial court properly rectified the title deeds to reflect the true position on the ground, invoking section 81(1) of the [Land Registration Act](#). She stresses that the applicant has failed to appreciate that the portion he purchased is different from the portion he occupies.
11. Finally, the 1<sup>st</sup> respondent urges that she is an elderly lady in her 90s, and further litigation will prejudice her right to enjoy the fruits of her judgment. Reliance is placed on *M/S Portreitz Maternity v James Karanga Kabia*, Civil Appeal No. 63 of 1997, where the Court emphasized the need to balance the right of appeal against the respondent's right to enjoy the fruits of judgment. She prays that the application be dismissed with costs.
12. The governing law is Rule 4 of the Court of Appeal Rules, 2022, which grants this Court discretion to extend time for the doing of any act, including the filing of an appeal. Whereas the Rule does not list the factors to consider, the principles were set out in *Leo Sila Mutiso v Hellen Wangari Mwangi* [1999] 2 EA 231 as follows:

“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.”

13. Applying these principles, the delay in this case was approximately three months beyond the prescribed sixty days. While not the longest delay, it must nonetheless be explained. The applicant attributes the delay to difficulties in obtaining proceedings and a certificate of delay. However, the record shows that proceedings were ready by 6<sup>th</sup> December, 2024, and were, in fact, collected on 24<sup>th</sup> January, 2025. The applicant has offered no explanation or denial that his counsel received the Deputy Registrar’s email in December, 2024 communicating that the proceedings were ready. This omission creates the impression that the applicant has not been fully candid with the Court. As was emphasized in *Bi-Mach Engineers Ltd (supra)*, inaction by counsel cannot be excused. In any event, the applicant has not explained the delay from 24<sup>th</sup> January, 2025 when he concedes he collected the proceedings to 20<sup>th</sup> May, 2025 when the present application was filed. As aforesaid, explanation over the delay is the key that unlocks discretion; and forthrightness with the court is the oil that greases its hinges. In the present case, the applicant offered neither.
14. On arguability, I note that the dispute revolves around rectification of title and exchange of parcels to reflect the true position on the ground. The applicant insists the trial court erred in cancelling his title, while the respondent argues the rectification was within the statutory mandate under section 81 of the *Land Registration Act*. Without expressing a conclusive view, I find that the grounds raised are not frivolous. However, the arguability of an appeal cannot outweigh the absence of a satisfactory explanation for delay.
15. On prejudice, I accept the respondent’s submission that she is an elderly lady entitled to the fruits of her judgment, and that prolonged litigation will occasion her prejudice. While the applicant argues that no prejudice will arise since the respondent is already in possession, I am not persuaded that this outweighs the respondent’s right to enjoy finality in litigation.
16. In the end, I find that the applicant has not offered a satisfactory explanation for the delay, nor shown sufficient cause to warrant the exercise of this Court’s discretion in his favour. The Notice of Motion dated 20<sup>th</sup> May, 2025 is, accordingly, dismissed with costs to the 1<sup>st</sup> respondent.
17. It is so ordered.

**DATED AND DELIVERED AT NYERI THIS 19<sup>TH</sup> DAY OF SEPTEMBER, 2025.**

**JOEL NGUGI**

.....

**JUDGE OF APPEAL**

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

Signed

**DEPUTY REGISTRAR**

