



REPUBLIC OF KENYA



**Patel v Kaitui Enterprises Co Ltd & 5 others (Civil Application
E108 of 2025) [2025] KECA 1663 (KLR) (21 October 2025) (Ruling)**

Neutral citation: [2025] KECA 1663 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAKURU
CIVIL APPLICATION E108 OF 2025
MA WARSAME, JA
OCTOBER 21, 2025**

BETWEEN

SAROJBALA MANSUKHBHAI PATEL APPLICANT

AND

KAITUI ENTERPRISES CO LTD 1ST RESPONDENT

THE COMMISSIONER OF LANDS 2ND RESPONDENT

THE ATTORNEY GENERAL 3RD RESPONDENT

THE CHIEF LAND REGISTRAR 4TH RESPONDENT

SIMEON KIPROTICH RUGUTT 5TH RESPONDENT

ERICK KIPRONO TONUI 6TH RESPONDENT

*(An application for extension of time to file an appeal against the judgment
of the ELC at Kericho (Hon. Justice M.C Oundo) delivered on 8th February
2024 in Civil Suit No. 55 of 2017 (Formerly Kericho HCCC No. 45 of 2002))*

RULING

1. The applicant has filed the instant application dated 2nd May 2025 seeking extension of time to file a notice of appeal out of time under Rule 4 of the Court of Appeal Rules. The applicant seeks to challenge the judgment delivered on 8th February 2024 by Hon. Justice M.C Oundo dismissing the applicant's suit concerning land title disputes over LR. No KERICHO MUNICIPALITY/BLOCK 4/69.
2. The backdrop of this application is a long-running land dispute that commenced in 2002 (originally as Kericho HCCC No. 45 of 2002, later converted to Environment and Land Court Civil Suit No.55 of 2017). The applicant sought declaratory orders regarding ownership of the suit property,



cancellation of certain names from the register of titles, and eviction orders. On 8th February 2024, the Environment and Land Court dismissed the applicant's suit entirely.

3. The applicant filed a notice of appeal on 2nd May 2025, approximately 1 year, 2 months, and 22 days after the judgment was delivered on 8th February 2024. The prescribed period for filing a notice of appeal under Rule 74(2) of the Court of Appeal Rules is 14 days from the date of judgment. The current application was filed on the same date as the notice of appeal, representing a substantial delay that requires compelling justification.
4. The applicant attributes the delay to their former advocates' failure to file the appeal despite receiving instructions to do so. In support of this contention, the applicant's affidavit sworn on 2nd May 2025 states that upon delivery of the judgment, the applicant instructed their previous Advocates to lodge an appeal. Unfortunately, they not only failed to file the Notice of Appeal, but also failed to perfect the record of Appeal within the stipulated timeframe.
5. The 5th Respondent, Simeon Kiprotich Rugutt, has filed a comprehensive replying affidavit dated 19th August 2025 opposing this application on several critical grounds. He argues that the application is a non-starter and that it is legally unacceptable for advocate mistakes to excuse statutory violations, characterizing it as "total inaction disguised as a mistake."
6. The 5th Respondent emphasizes his position as the legal and registered proprietor who purchased the suit land in 2006, established his matrimonial home there in 2007, and has been living there since, with his title issued in 2009. He argues that allowing the application would cause him prejudice and that the failure to serve timely notice creates false expectations of finality. The respondent also highlights that this matter has been litigated for fifteen years and contends the application is brought in bad faith for selfish and ulterior motives and that the Inordinate delay of more than one (1) year (2) months after the judgment was delivered has not been explained.
7. The principles governing applications for extension of time are well settled. As stated in *Abdul Aziz Ngoma vs. Mungai Mathayo* [1976] eKLR, this Court's discretion to extend time under Rule 4 only comes into existence after "sufficient reason" for extending time has been established, and it is only then that other considerations such as the absence of any prejudice and the prospects of success in the appeal can be considered.
8. As further elaborated in *Leo Sila Mutiso v Hellen Wangarir Mwangi*, Civil Application No. Nai 255 of 1997, the relevant factors to be considered include the length of delay, the reason for delay, the chances of appeal succeeding, and the degree of prejudice likely to be caused to the respondent if extension is granted.
9. The applicant blames their former advocate for failing to file the appeal. However, this Court has consistently held that such explanations must be scrutinized carefully and must be supported by evidence of the client's diligence. As observed in *Habo Agencies Limited v Wilfred Odhiambo Musingo* [2015] eKLR:”

It is not enough for a party in litigation to simply blame the Advocates on record for all manner of transgressions in the conduct of the litigation. Courts have always emphasized that parties have a responsibility to show interest in and to follow up their cases even when they are represented by counsel.”

10. I find several critical deficiencies in the applicant's explanation.

First, there is a complete absence of evidence regarding when exactly the applicant became aware that no appeal had been filed and the period between learning of the former advocate's failure and instructing



new counsel. The applicant's affidavit is silent on this crucial aspect. Second, as established in *Bi-Mach Engineers Limited v James Kahoro Mwangi* [2011] eKLR:

“The applicant had a duty to pursue his advocates to find out the position on the litigation but there is no disclosure that the applicant bothered to follow up the matter with his erstwhile advocates. It is not enough simply to accuse the advocate of failure to inform as if there is no duty on the client to pursue his matter.”

11. In the present case, the applicant has demonstrated no effort whatsoever to follow up on their case. There is no evidence of correspondence, inquiries, or any attempts to monitor the progress of the appeal after the judgment was delivered. As observed in *Donald O. Raballa v Judicial Service Commission & another* [2018] eKLR:

“It is to some extent true to say mistakes of Counsel should not be visited upon a party but it is equally true when Counsel as agent is vested with authority to perform some duties and does not perform it, surely such principal should bear the consequences.”

12. The evidence shows a wholesale abandonment of the applicant's responsibilities as a litigant. The applicant appears to have remained completely passive for over 14 months, taking no steps to ensure their appeal was filed or to monitor their case.

13. In the end, the applicant has failed to establish "sufficient reason" for the extension of time as required under *Abdul Aziz Ngoma* (supra). The application is therefore dismissed with costs to the 5th Respondent.

DATED AND DELIVERED AT NAKURU THIS 21ST DAY OF OCTOBER, 2025.

M. WARSAME

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JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

