

**IN THE COURT OF  
APPEAL AT NAKURU  
(CORAM: WARSAME, J.A. IN  
CHAMBERS) CIVIL APPLICATION NO. E  
026 OF 2025 BETWEEN**

**RAYMOND RUTO & 15 OTHERS.....APPLICANT  
AND**

**STEPHEN KIBOWEN.....RESPONDENT**

*(Application for extension of time to file a notice of appeal out of time against the judgment of the Environment and Land Court at Nakuru (Njoroge, J.) delivered on 24th October, 2024*

*in*

***(Nakuru ELC Case No. 174 of 2015)***

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**RULING**

1. The applicants have filed the instant application dated 12th March 2025 seeking extension of time to file a notice of appeal out of time under Rule 4 of the Court of Appeal Rules. The applicants seek to challenge the judgment delivered on 24th October 2024 by Hon. Justice Mwangi Njoroge, which awarded the respondent Kshs. 30,000,000 in damages and mesne profits.
2. The genesis of this matter lies in a land dispute concerning parcel known as Lembus/Kilombe/157. The respondent purchased this land at a public auction conducted by the Agricultural Finance Corporation and subsequently obtained a decree in ELC Civil Case No. 218 of 2014. The applicants, who

are children of the original owner Samuel Kipruto Chepkeitany, have been in occupation of the land.

3. The applicants filed a notice of appeal on 28th October 2024, some four days after the judgment was delivered. The notice was lodged in court on 5th November 2024. Accounting for the vacation period between 21st December 2024 and 13th January 2025 (both days inclusive), the deadline for filing the record of appeal was 29th January 2025. The current application was filed on 9th April 2025, representing a delay of approximately seventy days.
4. The reasons for delay as stated on the face of the application are that the multiplicity of appellants numbering sixteen persons made communication between counsel and the appellants strenuous, taking up to a week to relay information. Additionally, there was delay in reaching consensus among all appellants to proceed with the appeal, and considerable cost of preparing the appeal necessitated raising money from among themselves.
5. In support of this contention, the applicant Simon Ruto has sworn a supporting affidavit deposing to the above matters and

stating that the appeal raises pertinent issues regarding the quantum of damages awarded by the trial court.

6. The respondent has filed a comprehensive replying affidavit dated 4th June 2025 opposing this application on the grounds that; the explanations are evasive and mere excuses given that the cost of e-filing is only Kshs. 9,000; that consensus to file the appeal was evidently reached quickly given the notice of appeal was filed within four days, and that there was additional unexplained delay between dating the application on 12th March 2025 and filing it on 7th April 2025. The respondent further states that he has been unable to execute the judgment and has suffered prejudice
7. The respondent has also contended that the record of appeal annexed to this application is defective as it lacks the proceedings, certified copy of the decree, and certified copy of the judgment. While, I note this objection, the validity and completeness of the intended record of appeal is not a matter within my jurisdiction at this interlocutory stage. This application concerns only whether sufficient reason exists to extend time.

8. 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 or otherwise of success in the appeal can be considered. As further elaborated in *Fakir Mohamed vs. Joseph Mugambi & two others*, Civil Application No. Nai. 332/04, the period of delay, the reason for the delay, the chances of the appeal succeeding if the application is granted, the degree of prejudice to the respondent if the application is granted, and compliance with time limits are all relevant factors to be considered
9. I have considered the application, the arguments advanced by both parties and the principles considered in applications such as this. In my view the delay of about two months is not inordinate. Further, the prompt filing of the notice of appeal within four days demonstrates the applicants' initial diligence and intention to appeal.

10. Significantly, the appeal raises a pertinent issues including whether the applicant's claim was res judicata and whether the award of trespass was merited. These are arguable grounds that deserve consideration on their merits. As this Court has recognized, where there are prospects of success on appeal, the interest of justice may favour granting an extension to allow the matter to be heard on its merits.
11. On the question of prejudice, I note the respondent's assertion that he has been unable to execute the judgment. However, this is a prejudice that flows from the existence of any appeal and can ultimately be compensated by an award of costs.
12. Balancing all these factors, I am satisfied that sufficient reasons have been shown to exercise the Court's discretion in favour of the applicants. The application is hereby allowed with costs to the respondent. The Applicants are granted seven (7) days to file the record of appeal and memorandum of appeal

**Dated and delivered at Nakuru this 21<sup>st</sup> day of October, 2025.**

**M.WARSAME**

.....  
**JUDGE OF APPEAL**

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

**Signed**

**DEPUTY REGISTRAR**