



REPUBLIC OF KENYA



**Towett v Kibaru & another (Civil Application E191 of 2025)  
[2025] KECA 1650 (KLR) (9 October 2025) (Ruling)**

Neutral citation: [2025] KECA 1650 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAKURU  
CIVIL APPLICATION E191 OF 2025  
MA WARSAME, JA  
OCTOBER 9, 2025**

**BETWEEN**

**SIMON MARITIM TOWETT ..... APPLICANT**

**AND**

**JOTHAM MUIRURI KIBARU ..... 1<sup>ST</sup> RESPONDENT**

**DEPUTY REGISTRAR ELC ELDORET ..... 2<sup>ND</sup> RESPONDENT**

*(An application for extension of time to file a notice of appeal and record of appeal, against the judgment of the Environment & Land Court at Nakuru (Mwangi Njoroge J) dated 19th January, 2023 in ELC No. 126 of 2012)*

**RULING**

1. The applicant, Simon Maritim Towett, has filed the instant application dated 2<sup>nd</sup> October 2024, seeking leave to file a notice of appeal and record of appeal out of time.
2. The application has been filed under Rule 4, Rule 44, Rule 49, Rule 84 and Rule 5(2)(b) of the Court of Appeal Rules 2022 and Section 3A and 3B of the *Appellate Jurisdiction Act*, Cap 9 of the Laws of Kenya.
3. The application is supported by affidavits of Benard Ochieng Akang'o and Simon Towett Maritim, and is based on the following grounds:
  - a. That the Notice of Appeal was filed and served within the stipulated time, on 24th January, 2023.
  - b. That the applicant also sought typed proceedings to facilitate filing a record of appeal on the same day (24th January, 2023).



- c. That it was not until the 22nd day of September, 2023 that typed proceedings were ready for collection.
  - d. That the record of appeal ought to have been filed on or before the 22nd day of November, 2023.
  - e. That due to inadvertence/mix up on the part of the appellant's counsel, it was not until the 22nd December, 2023 that the record of appeal was filed.
  - f. That the complete record of appeal was subsequently served upon the respondent's counsel after filing.
  - g. That there was a delay of One (1) month in filing and serving the record of appeal.
  - h. That the delay of one month is not inordinate and failure to file and serve the record of appeal timely has been explained and it was a mistake of counsel, which should not be visited upon an innocent litigant.
  - i. That the appeal raises arguable issues and has merit.
  - j. That since the record of appeal has been served upon the respondents, no prejudice shall be occasioned to the respondents should this application be allowed.
4. Rule 4 of the Court of Appeal Rules, 2022 empowers this Court to extend time for the doing of any act authorized or required by the Rules. The power is discretionary and should be exercised judicially upon good cause being shown. Some of the factors to bear in mind include the period of delay; the reason for the delay; the degree of prejudice the respondent stands to suffer; justice should be administered without undue regard to procedural technicalities and that justice should not be delayed. (see Njeri Njoroge v Joseph Maina Gichuhi & another [2018] eKLR)
5. Having considered the explanation put forth by the applicant, it is noteworthy that the applicant demonstrated clear intention to prosecute the appeal, as evidenced by the timely filing of the Notice of Appeal on 24th January 2023 and the prompt request for typed proceedings on the same day. The delay in filing and serving the record of appeal was occasioned by inadvertence and negligence on the part of counsel. It is a well-established principle that the mistakes of counsel ought not to be visited upon an innocent litigant who has acted diligently in pursuing his legal remedies.
6. I further note from the record that the applicant's advocate had earlier filed an application dated 15th July 2024 seeking omnibus orders including stay of execution and extension of time to file a record of appeal out of time, which was incompetent as it contravened Rule 55 of this Court's Rules. That application was subsequently withdrawn, necessitating the filing of the present application. This represents yet another inadvertence attributable to the applicant's advocate.
7. In such circumstances, it would be manifestly unjust to penalise the applicant for errors and delays caused by his advocate. The application is allowed with no orders as to costs

**DATED AND DELIVERED AT NAKURU THIS 9<sup>TH</sup> DAY OF OCTOBER 2025.**

**M. WARSAME**

.....

**JUDGE OF APPEAL**

I certify that this is a true copy of the original



Signed

**DEPUTY REGISTRAR**

