



REPUBLIC OF KENYA



KENYA LAW
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**Worseme v Abdullahi & 2 others (Civil Application E127 of 2025)
[2025] KECA 1599 (KLR) (3 October 2025) (Ruling)**

Neutral citation: [2025] KECA 1599 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPLICATION E127 OF 2025
DK MUSINGA, JA
OCTOBER 3, 2025**

BETWEEN

MELIHUN HASSEN WORSEME APPLICANT

AND

HABIBA NYAMBURA ABDULLAHI 1ST RESPONDENT

SHEIKH ABDULLAHI MOHAMED 2ND RESPONDENT

NAIROBI CITY COUNTY 3RD RESPONDENT

(Being an application for amendment of the application for extension of time to file and serve the record of appeal out of time in an intended appeal from the Judgment and Decree of the Environment and Land Court at Nairobi (Wabwoto, J.) delivered on 20th March 2024 in ELC Case No. 725 of 2016 as consolidated with ELC Case No. 325 of 2019)

RULING

1. The applicant's applications dated 6th March 2025 and 18th June 2025 seek extension of time to file a notice and record of appeal from the judgment of the Environment and Land Court (ELC) delivered on 20th March 2024 in ELC Case No. 725 of 2016 as consolidated with ELC Case No. 325 of 2019.
2. The brief background to the two applications is that the applicant, being dissatisfied with the decision of the ELC, instructed her advocates, Messrs. S.O. Owino & Associates, to lodge an appeal. The advocates filed a notice of appeal dated 22nd March 2024 and an associate in the said firm, Mr. A. O. was tasked to prepare and file the record of appeal. The said associate confirmed to the proprietor of the firm, Mr. Stephen Owino, that he had prepared the record of appeal and dated it 19th November 2024. Mr. Owino then sent the filing fees of Kshs.108,809 to his associate via M-pesa on 21st November 2024 and Kshs.6,087 for court fees deposit on 22nd November 2024 to facilitate the timely and proper lodgment of the appeal.



- 3. Subsequently, the associate purported to have generated receipts allegedly issued upon successful filing of the appeal, but that was not so. It was not until January 2025 when Mr. Owino conducted a routine review of the CTS portal to ascertain the status of the appeal when he realised that the appeal had not been filed. Mr. Owino wrote to the Deputy Registrar of this Court. He was notified that Civil Appeal No. E917 of 2024 that was indicated on the receipts had different parties and the alleged receipts were not genuine. A report was made at the Central Police Station on 26th February 2025 and Mr. Owino was issued with Occurrence Book (OB) No. 28 of 26th February 2025. It is therefore the criminal conduct of his said associate that caused the delay in filing of the record of appeal.
- 4. The 1st respondent has opposed the application. She states, inter alia, that upon receiving a response from the Deputy Registrar on 18th February 2025, the applicant’s advocate took 17 days to file the notice of motion, which delay has not been explained. She urges this Court not to grant the orders sought. The other respondents did not file any response.
- 5. I have considered the application, the affidavits filed by the parties, and their respective submissions. It is not in dispute that the delay in filing the record of appeal was occasioned by the criminal conduct of Mr. A. O. Advocate, who was then working in the firm of S.O. Owino & Associates, who had been instructed by the applicant to pursue the appeal. The response by this Court’s Deputy Registrar and the OB that was issued by the Central Police Station have not been challenged. In such circumstances, an innocent applicant should not suffer because of a mistake, error or fraud committed by her advocate. See Philip K. Chemwolo & Another vs Augustine Kubende [1986] KECA 87 (KLR).
- 6. The delay in filing the record of appeal is not inordinate and the same has been well explained.
- 7. I have perused the record of appeal which includes the draft memorandum of appeal. I am satisfied that the intended appeal is arguable. Although the respondents may be prejudiced if this application is granted, the applicant stands to suffer greater prejudice if she is not permitted to exercise her constitutional right of appeal due to a mistake that is not of her own making.
- 8. Consequently, I allow the applications for extension of time as sought. The costs of the applications shall abide the outcome of the intended appeal. The appeal should be filed and served within 30 days from the date of delivery of this ruling.

DATED AND DELIVERED AT NAIROBI THIS 3RD DAY OF OCTOBER 2025.

D. K. MUSINGA, (PRESIDENT)

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JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR.

