



REPUBLIC OF KENYA



KENYA LAW
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**Gwako & 26 others v Sankei (Civil Application E083 of 2025)
[2025] KECA 1806 (KLR) (31 October 2025) (Ruling)**

Neutral citation: [2025] KECA 1806 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAKURU
CIVIL APPLICATION E083 OF 2025
MA WARSAME, JA
OCTOBER 31, 2025**

BETWEEN

ESTHER MORAA GWAKO & 26 OTHERS & 26 OTHERS APPLICANT

AND

JORAM OLE SANKEI RESPONDENT

(An application seeking extension of time to file a notice of appeal out of time against the ruling of the High Court at Narok (Kullow J.) delivered on 7th April 2025 in Nakuru ELC No. E78 OF 2017)

RULING

1. The applicants have filed the instant application dated 24th July 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 7th April 2025 by Hon. Justice Mohammed N. Kullow.
2. The underlying dispute concerns land parcel number Narok/CIS-Mara/Lemek/138 measuring approximately 400 acres. The respondent filed suit seeking eviction orders against the applicants who had been in occupation of the suit property for over 35 years. The applicants filed a counterclaim seeking, inter alia, to be registered as proprietors of the suit land and a refund of the purchase price of Kshs. 2,160,000.00.
3. The reasons for delay as stated on the face of the application are that the judgment was scheduled for delivery on 6th October 2021 but was never delivered; the trial judge was subsequently transferred from Narok Law Courts to Migori Law Courts and thereafter suspended, which further delayed the matter; that despite persistent follow ups by the applicants and their advocates, including filing multiple letters to the registry and to the judge's chambers, no communication was issued regarding the date of judgment delivery.



4. In support of this contention, the applicants have annexed correspondence dated 15th December 2021, 28th September 2022, 21st March 2023 and 6th February 2023 following up on when the judgment would be delivered.
5. The applicants depone that it was not until 17th July 2025 when they personally visited the Office of the Deputy Chief Justice that they learnt judgment had already been delivered on 7th April 2025. Upon follow-up at Narok Law Courts, the applicants were shocked to discover that judgment had been delivered in their absence and without notice to their advocates on record.
6. There is no replying affidavit on record opposing this application.
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 or otherwise of success in the appeal can be considered.
8. I have considered the application, the arguments advanced by the applicants and the principles considered in applications such as this.
9. The principles applicable to delays occasioned by circumstances beyond a party's control have been considered by the courts on numerous occasions. In County Executive of Kisumu v County Government of Kisumu & 8 others [2017] eKLR, the Supreme Court observed that where delay is attributable to administrative processes rather than to the party, such circumstances may constitute sufficient reason for extension of time.
10. In the present case, the judgment was scheduled for delivery on 6th October 2021 but was not delivered on that date. The applicants persistently followed up through correspondence over a period of approximately three and a half years, as evidenced by the annexed letters. The presiding judge was transferred to Migori and subsequently placed under suspension, circumstances entirely beyond the applicants' control.
11. Most significantly, when judgment was eventually delivered on 7th April 2025, it was done without notice to the applicants or their advocates, denying them the opportunity to file their notice of appeal timeously. The applicants only became aware of the judgment delivery when they personally visited the Office of the Deputy Chief Justice on 17th July 2025.
12. These circumstances demonstrate that the delay in filing the notice of appeal was neither deliberate nor attributable to any negligence or lack of diligence on the part of the applicants. Rather, the delay arose from circumstances beyond their control, particularly the failure of the court to notify them of the judgment delivery date.
13. The applicants have annexed a draft memorandum of appeal raising arguable grounds including questions of limitation, adverse possession, and procedural fairness. There is no evidence of prejudice to the respondent that cannot be compensated by costs.
14. In the circumstances, the interests of justice favor allowing the appeal to be heard on its merits. The application is hereby allowed with no orders as to cost.

DATED AND DELIVERED AT NAKURU THIS 31ST DAY OF OCTOBER, 2025.

M. WARSAME

JUDGE OF APPEAL



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

Signed

DEPUTY REGISTRAR.

