



**Lotapash v Njache (Civil Application E050 of 2025)
[2025] KECA 1794 (KLR) (31 October 2025) (Ruling)**

Neutral citation: [2025] KECA 1794 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAKURU
CIVIL APPLICATION E050 OF 2025
MA WARSAME, JA
OCTOBER 31, 2025**

BETWEEN

SITONIK OLE LOTAPASH APPLICANT

AND

HUMPHREY MBUGUA NJACHE RESPONDENT

(An application for extension of time to file an appeal out of time against the judgment of the Environment and Land Court at Nyahururu (Hon. Lady Justice K. Bor) delivered on 11th February 2025 in ELC Case No. 326 of 2017)

RULING

1. The applicant has filed the instant application dated 29th April 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 11th February 2025 by Hon. Lady Justice K. Bor.
2. The backdrop of this application is that the applicant is the registered owner of property known as Laikipia/Marmanet/4563 ("the Suit Property"). On 2nd December 2015, the applicant entered into a Sale Agreement with one Martin Runo Ngotho for the sale of the Suit Property at a purchase price of Kshs. 4,500,000. The purchaser paid deposits totaling Kshs. 1,000,000 in two installments in November 2015, with the final installment settled on 16th May 2016. Significantly, the applicant was in occupation and use of the Suit Property at all material times prior to and during this sale transaction.
3. Before the transfer to the purchaser could be finalized, the respondent filed an Originating Summons application dated 10th March 2017 before the Superior Court in proceedings being Nyahururu Environment and Land Court Case No. 326 of 2017, by which the respondent claimed ownership of the Suit Property by way of adverse possession.



4. The applicant filed a notice of appeal on 26th February 2025, being one day after the expiry of the statutory period prescribed under Rule 77(2) of the Court of Appeal Rules. The current application was filed on 29th April 2025, approximately two months and three weeks after the judgment was delivered.
5. The reasons for delay as stated on the face of the application are that the Notice of Appeal aforesaid was filed on 26th February 2025 being less than one day out of the time procedurally prescribed under Rule 77(2) of this Court's Rules, and that the failure to file the Notice on time was an inadvertent and genuine error of computation of time by the applicant's former advocates which ought not be occasioned on the applicant.
6. The respondent has filed a comprehensive replying affidavit dated 26th May 2025 opposing this application on several grounds. The respondent contends that there is no cogent reason advanced by the applicant for failing to comply with the timelines of the court, and that it took the applicant two months and three weeks to file the instant application which is an inordinate delay and the same has not been satisfactorily explained to this Honourable Court. Additionally, the respondent claims that the applicant's application is an attempt at introducing completely new issues which were never raised during trial in the Superior Court, which is an effort to drag a non-party to the suit in the superior court into this intended appeal.
7. Lastly, the respondent states that on 5th March 2025 the Land Registrar registered the suit property in his name, in effect dispensing with the applicant's title if any. The respondent further contends that once the suit property was registered in his names, then the application and the appeal shall be nugatory and an academic exercise in futility aimed at wasting precious judicial time.
8. I have considered the application, the arguments advanced by both parties and the principles considered in applications such as this. Under rule 4 of this Court's rules, it is settled that, the court has unfettered discretion on whether to extend time or not. In so doing, the discretion should be exercised judiciously, and not frivolously having regard to the guiding principles, including the length of the delay, the reason for the delay, the chances of success of the appeal, and whether or not the respondent will suffer prejudice if extension of time was granted. See the case of *Leo Sila Mutiso v Rose Hellen Wangari Mwangi Civil Application No Nai 251 of 1997*.
9. The period of delay in this matter is minimal, being only one day with respect to the filing of the notice of appeal. While the subsequent application for extension was filed approximately two months and three weeks after the judgment, this delay must be viewed in the context that the applicant only became aware of the late filing upon engaging new counsel who reviewed the filing receipts. This Court has consistently recognized that a litigant should not be penalized for the inadvertent errors of their legal representatives where such errors are genuine and do not demonstrate deliberate disregard for court procedures.
10. The explanation proffered by the applicant is therefore credible in these circumstances. The evidence shows that the applicant filed the notice of appeal timeously upon becoming aware of the adverse judgment, missing the deadline by only one day. This demonstrates an intention to appeal and diligence in pursuing the appellate remedy.
11. On the question of prospects of success, I note that the draft Memorandum of Appeal annexed to the supporting affidavit raises substantial grounds of appeal that are arguable and merit consideration by this Court. The grounds challenge factual findings made by the learned trial judge regarding ownership, adverse possession, and the evaluation of evidence. In my view, these are matters that require full ventilation in an appeal.



12. In the premises, I find that the applicant has demonstrated sufficient reason for the extension sought, and that the interests of justice favor granting the application.

13. The application is hereby allowed with no orders as to costs.

The Applicant is granted fourteen (14) days from the date of this ruling to file and serve a fresh notice of appeal.

DATED AND DELIVERED AT NAKURU THIS 31ST 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

