



REPUBLIC OF KENYA



**Mogaka v Mose (Civil Application E151 of 2024)  
[2025] KECA 1683 (KLR) (21 October 2025) (Ruling)**

Neutral citation: [2025] KECA 1683 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT KISUMU  
CIVIL APPLICATION E151 OF 2024  
LK KIMARU, JA  
OCTOBER 21, 2025**

**BETWEEN**

**LINET BOSIBORI MOGAKA ..... APPLICANT**

**AND**

**ABEL MOKAYA MOSE ..... RESPONDENT**

*(Being an application for extension of time from the Judgment of  
the Environment and Land Court of Kenya at Nyamira (Mugo  
Kamau, J) Dated 3rd October, 2024 in ELC Case No. E002 of 2023)*

**RULING**

**RULING**

1. This application is essentially predicated on Rule 4 of the Court of Appeal Rules. It seeks two prayers. Firstly, that the firm of B.T. Atencha & Co. Advocates be allowed to come on record for the applicant in the place of the firm of M S Omondi Ogwel & Co. Advocates. This application is procedural and is allowed in limine. The second prayer is coached in the following terms:
  - “2. That this Honourable Court be pleased to extend the time within which the applicant may file and serve the Record of Appeal in respect of the intended appeal against the Judgment delivered by the Environment and Land Court at Nyamira (Hon. Justice Mugo Kamau) on 3<sup>rd</sup> October, 2024 in ELC case No. E002 of 2023.
  3. That upon grant of leave, this Honourable Court be pleased to deem the Record of Appeal attached herein as duly filed upon payment of requisite filing fees.”



2. The application is supported by the annexed of Linet Bosibori Mogaka, the applicant and the grounds stated on the face of the application. The respondent was served with the hearing notice of today's hearing by the Court. The respondent neither filed a response to the application nor written submissions. The application therefore is unopposed.
3. Rule 4 of the Court of Appeal Rules grants this Court unfettered discretion to extend time for any steps to be done outside the period stipulated by the Rules. This discretion, however, must be exercised judiciously. Over time, the Court has come up with principles to aid it in the exercise of this discretion. It includes; the reason for the delay, the length of the delay, whether the intended appeal is likely to succeed and whether the respondent will be prejudiced.
4. In the present application, this Court did record a compromise on 20<sup>th</sup> November, 2024 which, inter alia, ordered status quo to be maintained in respect of the disputed parcel of land pending the hearing of the appeal on condition that the applicant files and serves the record of appeal within thirty (30) days. It appears that the applicant failed to comply with the later order.
5. The applicant blames the non-compliance of this order to inaction by his former advocate who failed to file the record of appeal in time. The applicant states that her effort to be informed of the the status of the appeal from her erstwhile advocate was frustrated by breakdown in communication between herself and the said advocate. That may have been the case. However, this Court has stated in many instances that the case belongs to the litigant and not his advocate. It behooves such litigant to vigilantly pursue his case including seeking the necessary information from his advocate. The applicant states that she only become aware of failure by her former advocate to file and serve the record of appeal as directed by the Court when she was evicted from the suit parcel of land. That was on 11<sup>th</sup> June 2025. The applicant did not file the present application until the 23<sup>rd</sup> July, 2025.
6. It is clear from the above narration that the applicant has been indolent. Even after being ordered by the Court to file the record of appeal within the specified period. It will not do for the applicant to blame her former advocate as in this circumstances of this case. It appeared that once the applicant was granted interim orders by this Court which was pegged on her filing and serving the record of appeal within thirty (30) days, she went to sleep. This Court cannot exercise its discretion in favour of such applicant. The delay was inordinate and the explanation for the delay given is not excusable.
7. The application lacks merit and is hereby dismissed but with no order as to costs.

**DATED AND DELIVERED AT KISUMU THIS 21<sup>ST</sup> DAY OF OCTOBER 2025.**

**L. KIMARU**

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

I certify that this is a true copy of original.

Signed

Deputy Registrar.

