

IN THE COURT OF APPEAL
AT NAKURU
(CORAM: WARSAME J.A. (IN CHAMBERS))
CIVIL APPLICATION NO. E084 OF 2025

BETWEEN

SAMWEL PARSOILAL SEME.....APPLICANT

AND

JOHN MASIANTET SAENI.....1ST RESPONDENT

ODUPOI OLE SAENI.....2ND RESPONDENT

(An application for extension of time to file and serve the Notice of Appeal and Record of Appeal out of time in an intended Appeal from the Judgment of the ELC High Court of Kenya at Kilgoris (Mwanyale J.) dated 1st day of April, 2025

in

ELC NO. E004 OF 2024)

RULING

1. On 1st April 2025 the Environment and Land Court at Kilgoris delivered judgment in ELC Appeal No. E004 of 2024. The court allowed the appeal filed by the present respondents (who were the appellants in that appeal) against the present applicant.
2. The dispute concerned the ownership of land parcel number Transmara/Nkararo/773. The High Court found that in earlier land adjudication proceedings (Objection No. 107/1990), the

objection had been allowed in favor of the 1st respondent herein, meaning the land was awarded to him. However, the trial magistrate's court had failed to properly consider this earlier decision when it ruled in favor of the present applicant.

3. The High Court therefore set aside the magistrate's judgment and instead entered judgment declaring the respondents as the rightful owners of the suit property. The respondents were awarded costs of both the suit and the appeal.
4. The applicant was aggrieved but did not take the first necessary steps to challenge the decision within 14 days of its delivery as required under Rule 77(2) of the Court of Appeal Rules, 2022.
5. Where a party fails to give a notice of intention to appeal, Rule 4 gives the Court the discretion to extend that time. It is a discretion exercised on behalf of the Court by a single judge. The discretion is wide and unfettered. (See **Leo Sila Mutiso V. Rose Wangari Mwangi, Civil Appeal No. Nai. 255 of 1997**). Though wide and unfettered the discretion must be exercised judiciously and upon reason rather than arbitrarily, capriciously, on whim, or

sentiment. (**See Julius Kamau**

Kithaka v. Waruguru Kithaka Nyaga & 2 Others, CA. No. 14 of 2013).

6. Some of the considerations, which are by no means exhaustive, in an application for extension of time include the length of the delay involved, the reason or reasons for the delay, the possible prejudice, if any, that each party stands to suffer, the conduct of the parties, the need to balance the interests of a party who has a decision in his or her favour against the interest of a party who has a constitutionally underpinned right of appeal, the need to protect a party's opportunity to fully agitate its dispute, against the need to ensure timely resolution of disputes; the public interest issues implicated in the appeal or intended appeal; and whether, prima facie, the intended appeal has chances of success or is a mere frivolity. In considering the last principle, it must be borne in mind that it is not really the role of the single judge to determine definitively the merits of the intended appeal. That is for the full court if and when it is ultimately presented with the appeal. (**Athuman Nusura Juma V. Afa Mohamed Ramadhan, CA No 227 of 2015**).

7. According to the applicant the delay from 1st April 2025 to 24th July 2025 was approximately 115 days. The reasons proffered for the delay include the fact that at the time the matter was determined, the applicant was not informed by his previous advocates on record of the outcome of the judgment. Thus he was unable to issue instructions for appealing a decision he was not even aware of.
8. The applicant deposes that he has always tracked his case and attended the physical court for hearing. However, due to poor network issues in the remote area of Lolgorian where he resides, he was not able to track the case after the hearing since it was being done virtually. He was also unable to know the date set for judgment since his previous advocates on record did not communicate the same to him on time, which forced him to travel physically to court, whereby he was informed by the registry staff that judgment had already been entered and the said judgment was not in his favor.
9. The applicant further states that judgment in the Magistrate's Court (MCELC No. 37 of 2021) was delivered on 18th January 2024 in his favor and there were no orders of stay served upon

him. There being no orders of stay nor orders hindering him from disposing off the property, he sold the same to a third party, Moses Ntume Leshao, and transferred it to him on 14th February 2024, which sale was not a secret as alleged by the respondents.

10. The respondent does not think the applicant deserves the exercise of the court's discretion because it is incumbent upon a litigant to keep track of his case in court and that the applicant cannot shift blame to his former advocates for any delays in the prescribed time to lodge an appeal; that the application is an afterthought; and that while the subject suit for the appeal was ongoing the applicant secretly sold the suit land Transmara/Nkararo/773 and title was issued to Moses Ntume Leshao, and they have filed ELC No. E025 of 2025 challenging the issuance of the said title.
11. It is my view that, apart from the fact that the applicant has been candid on why there has been delay in lodging and serving the notice of appeal, the circumstances warrant the exercise of the Court's discretion. The applicant was the successful party in the Magistrate's Court proceedings and had

no orders of stay

served upon him. In such circumstances, a party may reasonably rely on his advocates to inform him of developments in an appeal filed by the other party. The applicant deposes that he resides in a remote area with poor network connectivity which prevented him from following virtual proceedings. Upon being informed of the adverse judgment, he acted promptly by instructing new advocates who filed both the notice of appeal and this application on 24th July 2025.

12. While it is true that a litigant bears responsibility for his case, the circumstances here demonstrate that the applicant acted with reasonable diligence once he became aware of the judgment. The fact that he was the successful party in the lower court and had legitimate expectation of being informed by his advocates of any adverse development is a relevant consideration.
13. In my view, the appeal does not appear to be frivolous. The questions being raised include whether the trial court properly considered the outcome of objection proceedings No. 107/1990 and whether the registration of the 1st respondent was done in accordance with law. The memorandum of appeal contains 16

grounds which, on their face, demonstrate that this is not a frivolous appeal and has reasonable prospects of success.

14. For these reasons, I grant the prayer to extend time within which the notice of appeal may be filed and served. The applicant consequently, has 14 days from the date of this ruling to file and serve the notice of appeal.

No orders as to costs.

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