

**IN THE COURT OF APPEAL
AT KISUMU**

(CORAM: ASIKE-MAKHANDIA, JA (IN CHAMBERS))

CIVIL APPLICATION NO. E066 OF

2025 BETWEEN

TOM MBOYA TSALIA.....APPLICANT

AND

SAMSON OTATWA MUNANGA1ST

RESPONDENT GRACE KHABALI

MUNANGA.....2ND RESPONDENT

(Being an application for extension of time to lodge Notice and Record of appeal from the Ruling and Order of the High Court of Kenya at Kakamega, (Chirchir, J.,) dated 14th day of November, 2024

in

Succession Cause No. 215 of 2023)

RULING

[1] , **Tom Mboya Tsalia**, the applicant, has in the instant application sought a plethora of remedies some of which I cannot grant sitting as a single judge of this court. In this ruling therefore, I will confine myself to that single prayer of extension of time that I have jurisdiction to entertain.

[2] On 14th November 2024, the High Court of Kenya at Kakamega delivered a ruling in the succession cause no 215 of 2003 allowing the respondents' mode of distribution while dismissing the

applicant's affidavit of protest. Dissatisfied with the Ruling and order,

the applicant intends to lodge an appeal to this court. However, he is unable to do so as of right as he has been caught up by the time strictures of his court that require that appeals be lodged within fourteen days of the delivery of the ruling or judgment sought to be appealed against.

[3] It is for this reason, that the applicant has taken out this motion on notice under Rule 4 of this Court's Rules seeking for extension of time within which to lodge and serve the Notice as well as the record of appeal. In support of the application, the applicant contends that, during the delivery of the ruling he was absent, so was his previous counsel. That neither of them were aware of the delivery of the ruling as no notice had been served on either of them. That he only came to know of the ruling four months later upon visiting the court registry. He maintains that the intended appeal has high chances of success and that he is likely to suffer irreparable loss and damage if the extension of time sought is denied. He asserts that, the application has been made without undue delay and lastly, that the respondents are unlikely to suffer any prejudice if the application was allowed.

[4] The application was opposed by the respondents through a replying affidavit sworn by their counsel on record. That affidavit dwells largely and at length with the bonafides of the applicant in

pursuing the application, his failure to comply with court orders

issued against him in the past, and in particular on costs, failure to offer security for costs and the fact that the delay is inordinate and had not been sufficiently explained.

[5] When the application was placed before the Deputy Registrar of this Court for directions, she directed that the application be heard by way of written submissions and without appearance of counsel or parties. However, none of the parties complied with the requirement for written submissions.

Accordingly, I will make my determination on the basis of the grounds on the face of the application, affidavits in support of and in opposition to the application as well as the further affidavit of the applicant.

[6] It is trite that an appeal to this Court ought to be entered within fourteen days of the date of the ruling or judgment appealed against by filing a notice of appeal. However, in the event of failure, the court to which the appeal is made may for good cause admit an appeal after the period required has elapsed, and shall so admit an appeal if it is satisfied as to the reasons for the delay.

[7] **Rule 4** of the Court of Appeal Rules 2022 provides that this Court may, on such terms as may be just, by order, extend the time limited by these Rules, or by any decision of the Court or of a

Superior Court,

for the doing of any act authorized or required by these Rules, whether before or after the doing of the act.

[8] In the case of **Andrew Kiplagat Chemaringo V. Paul Kipkorir**

Kibet [2018] e KLR this court while considering the grounds upon which it will base its decision on applications of this nature opined that;

“...the law does not set out any minimum or maximum period of delay. All it states is that the delay should be satisfactorily explained, A plausible and satisfactory explanation for the delay is the key that unlocks the court’s flow of discretionary favour. There has to be valid and clear reasons, upon which discretion can be favourably exercisable.”

[9] See also the court's Ruling in **Sila Mutiso vs Helen Wangari, (NRB) Civil Application No. 251 of 1997**, where it held that;

“...first, the length of the delay; secondly, the reason for the delay; thirdly (possibly), the chances of the appeal succeeding if the application is granted; and fourthly, the degree of prejudice to the respondent if the application is granted.”

[10] The applicant has readily admits that he has taken long for him to manifest his intention to lodge an appeal. Whereas the ruling was delivered on 14th November 2024, it was not until 30th April 2025 that he filed the instant application. The delay is of about five months which might appear inordinate. However, given

the reasons for the delay which iam inclined to believe, I will not hold it against the applicant who in any event is a layman and acting in person. He

might not be well versatile in the intricacies of the law and procedure.

[11] Further, this being a family and succession matter, I see no prejudice that the respondents may suffer if the applicant is allowed to exercise and exhaust his undoubted right of appeal. Again, being a family dispute over inheritance, the question that arises is whether the trial court was right in the mode distribution of the estate it adopted which the applicant feels was to his detriment. This obviously makes the intended appeal arguable

[12] In ultimate, I allow the application and direct that the applicant files his notice and record of his intended appeal within the next **forty-five (45)** days from the date of this ruling.

Dated and delivered at Kakamega this 30th day of October, 2025.

ASIKE-MAKHANDIA

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

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

Singed
DEPUTY REGISTRAR