



**Aketch v Anyango (Civil Application E072 of 2025)
[2025] KECA 1879 (KLR) (7 November 2025) (Ruling)**

Neutral citation: [2025] KECA 1879 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT KISUMU
CIVIL APPLICATION E072 OF 2025
LK KIMARU, JA
NOVEMBER 7, 2025**

BETWEEN

CAROLINE ACHIENG AKETCH APPLICANT

AND

JAMES OTIENO ANYANGO RESPONDENT

(Being an application for extension of time from the Judgment of the Environment and Land Court of Kenya at Siaya (A.Y. Koross, J) dated 3rd October, 2024 in ELC Case No. E007 of 2023)

RULING

1. Caroline Achieng Aketch moved this Court by notice of motion made under Rule 4 of the Court of Appeal Rules seeking to be granted extension of time to lodge the notice of appeal and thereafter the Record of Appeal out of time from the decision of the Environment and Land Court (ELC), Siaya delivered on 3rd October, 2024. The applicant states that immediately after the decision was rendered, she fell ill and suffered depression that prevented her from lodging the appeal in time. She further states that being a widow, it took time for her to raise the necessary legal fees to instruct an advocate to act for her in the appeal. She asserts that she should be allowed to ventilate her good appeal before this Court which has high chances of success. She pleads that if she is not allowed the chance to exercise her right of appeal, she will suffer irreparable loss. The application is supported by the annexed affidavit of the applicant.
2. The application is opposed. The respondent, James Otieno Onyango swore a replying affidavit in opposition to the application. He deponed that the delay by the applicant in lodging the appeal in time was inexcusable. The respondent was not persuaded by the reasons given by the applicant for delay in lodging the appeal in time. He was not convinced that the illness the applicant claims to have suffered from during the material period was such that it prevented her from filing the appeal in time. In particular, he pointed out that the delay of seven (7) months was inordinate and unexplained. He



deponed that the applicant's lack of due diligence should not be rewarded by this Court granting the extension of time sought. He maintained that the applicant's intended appeal was neither arguable nor did it have any chance of success. He urged the Court not to exercise its discretion in the applicant's favour and consequently dismiss the application.

3. Counsel for both parties to this application filed written submissions in support of their respective opposing positions. They both appreciated that under Rule 4 of the Court of Appeal Rules, this Court has unfettered discretion to enlarge time to any step limited by the Rules. However, he, has been reiterated time and time again, this discretion is not exercised capriciously or by judicial fact. Over time, courts have come up with principles which must be considered before the discretion is expressed. They include, the length of delay, the reason for the delay, whether the intended appeal has chances of success and whether the respondent will be prejudiced if the order of enlargement of time is issued. (See Nicholas Kiptoo Arap Korir Salat v. Independent Electoral and Boundaries Commission & 7 others [2014] eKLR).
4. In the present application, the applicant has explained the reasons for delay in lodging the notice of appeal in time. She deponed that she was ailing at the material time. She annexed medical documents to her affidavit which indeed established that she was ailing at the material time. She further stated that being a widow, she was financially challenged at the time and did not have finances to instruct an advocate to lodge the appeal in time. Although the respondent expressed scepticism with the assertion by the applicant regarding her ailment, this Court is persuaded that indeed the applicant was hampered by illness from lodging the appeal in time. The delay of seven (7) months is not inordinate in the circumstances of this case. The subject of the dispute being land, it is only fair and just that the applicant be given a chance to ventilate her appeal before this Court.
5. In the premises therefore, for the above reasons, this Court will exercise its discretion in favour of the applicant. She is granted extension of time to lodge the appeal out of time. The notice of appeal shall be filed and served within thirty (30) days of today's date.
6. The respondent shall have the costs of the application.

DATED AND DELIVERED AT KISUMU THIS 7TH DAY OF NOVEMBER, 2025.

L. KIMARU

JUDGE OF APPEAL

I certify that this is a true copy of original.

Signed

DEPUTY REGISTRAR.

