

**IN THE COURT OF  
APPEAL AT NYERI  
(CORAM: KANTAI, J.A. - IN  
CHAMBERS) CIVIL APPLICATION NO.  
E147 OF 2025 BETWEEN**

**MOHAMED SHARIF IDERUS.....APPLICANT  
AND**

<b>MOHAMED</b>	<b>ALI</b>	<b>HUSSEIN.....</b>	<b>1<sup>ST</sup></b>
<b>RESPONDENT</b>		<b>MOHAMED</b>	<b>NOOR</b>
<b>OMAR.....</b>	<b>2<sup>ND</sup></b>	<b>RESPONDENT</b>	<b>GOLICHA</b>
<b>HASSAN GOLICHA.....</b>	<b>3<sup>RD</sup></b>	<b>RESPONDENT</b>	
<b>ADEN</b>	<b>HAJIR</b>	<b>BASHIR.....</b>	<b>4<sup>TH</sup></b>
<b>RESPONDENT</b>			<b>AHMED</b>
<b>YUSSUF.....</b>	<b>5<sup>TH</sup></b>		<b>RESPONDENT</b>
<b>HUSSEIN</b>	<b>ABDIWAHAB.....</b>		<b>6<sup>TH</sup></b>
<b>RESPONDENT</b>			
<b>SAMOW</b>	<b>IDERUS.....</b>		<b>7<sup>TH</sup></b>
<b>RESPONDENT</b>	<b>RAHA MUKTAR.....</b>		
<b>8<sup>TH</sup></b>	<b>RESPONDENT</b>		<b>MOHAMED</b>
<b>SHARIFOW.....</b>	<b>9<sup>TH</sup></b>	<b>RESPONDENT</b>	<b>SALO</b>
<b>BORA.....</b>	<b>10<sup>TH</sup></b>	<b>RESPONDENT</b>	
<b>ABDIKADIR</b>	<b>SHARIF.....</b>		<b>11<sup>TH</sup></b>
<b>RESPONDENT</b>			

*(An application for leave to file an appeal out of time against the Judgment of the Environment and Land Court of Kenya at Meru (Oguttu Mboya, J.) delivered on 10<sup>th</sup> March, 2025*

*in*

***E.L.C Misc. No. E002 of 2025.)***

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**RULING**

The applicant, **Mohamed Sharif Iderus** applies by Motion brought under various provisions of law including **rule 4** of the **Court of Appeal Rules** that I grant him leave to file appeal out of time against the ruling of **Oguttu Mboya, J.** delivered on 10<sup>th</sup> March, 2025 in Meru ELC Misc. No. E002 of 2025. He says in grounds on the face of the Motion and in his supporting affidavit

that time to lodge an appeal has lapsed; that he only received a certified copy of ruling and proceedings on 14<sup>th</sup> August, 2025; that due to his health status where he had been in and out of hospital

with several life threatening condition and current financial and/or economic constraints he was unable to raise lawyers' fees to represent him in the intended appeal and that this is what caused delay in filing an appeal; that delay in making the application is not inordinate and that no party will be prejudiced if I allow the application. Further, that he had filed an application praying for setting aside and/or review of dismissal orders delivered by Yano, J. on 19<sup>th</sup> December, 2024, stay of execution and extension of time to file an appeal against the judgment of a Magistrates Court in Tigania (ELC No. 49A of 2022 delivered on 2<sup>nd</sup> March, 2022) - he does not say what became of that application but I believe that it is safe to assume that it was dismissed. He has attached a copy of the ruling by Oguttu Mboya, J. where his application was dismissed.

There is also a draft Memorandum of Appeal.

The 1<sup>st</sup> respondent, **Mohamed Ali Hussein** who responds to the application on his own behalf and that of the 2<sup>nd</sup> and 3<sup>rd</sup> respondents stated that there is no notice of appeal; that the applicant has not given any evidence to show that he was unwell or had financial constraints to be unable to file an appeal; that delay in bringing the application has not been explained; that the application before the Environment and Land Court (ELC) was for review and an appeal is not automatic; that no leave to appeal was sought or obtained and the application should thus be dismissed.

The 4<sup>th</sup> to 11<sup>th</sup> respondents did not respond to the application. I note that a hearing notice dated 21<sup>st</sup> October, 2025



kaberiaw@gmail.com; where parties were informed of the hearing date and required to file written submissions. None of the parties filed submissions.

The principles that apply in an application for extension of time to do any act required by our rules were well set out in the case of **Leo Sila Mutiso vs. Rose Hellen Wangari Mwangi** Civil Application No. NAI 255 of 1997 as follows: -

***"It is now well settled that the decision whether or not to extend the time for appealing is essentially discretionary. It is also well stated that in general the matters which this Court takes into account in deciding whether to grant an extension of time, are 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."***

The applicant here says that he was prevented from filing an appeal on time or at all due to poor health where he suffered "... *several life threatening condition...*" He does not specify what health issues he suffered and the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> respondents are entitled to question why the applicant has not provided any evidence in support of that allegation. If, indeed the applicant suffered such health conditions that threatened his life he would be in possession of medical records which he should have furnished to back that claim.

I note that ruling intended to be appealed was delivered on 10<sup>th</sup> March, 2025 while the application is "e-filed" on 2<sup>nd</sup> October,

2025. There is an unexplained period of over 6 months between the delivery of the ruling and the filing of the application.

The ruling intended to be appealed was one resulting from a review application and I have my doubts on the chance of the intended appeal succeeding.

The applicant has not satisfied me that I should exercise my discretion in his favour and in the premises I find the application to have no merit and I dismiss it with costs to the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> respondents.

**Dated and delivered at Nyeri this 7<sup>th</sup> day of November, 2025.**

**S. ole KANTAI**

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**JUDGE OF APPEAL**

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

**Signed**  
**DEPUTY REGISTRAR**