



**Ketere v Morintat & 4 others (Civil Application E091 of 2025)
[2025] KECA 1880 (KLR) (7 November 2025) (Ruling)**

Neutral citation: [2025] KECA 1880 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT KISUMU
CIVIL APPLICATION E091 OF 2025
LK KIMARU, JA
NOVEMBER 7, 2025**

BETWEEN

LEONARD LENANA KETERE APPLICANT

AND

SIMON LEBOO MORINTAT 1ST RESPONDENT

BENARD KETERE 2ND RESPONDENT

JONATHAN KOIKAI KETERE 3RD RESPONDENT

KORINGO OLE NGOLIAL 4TH RESPONDENT

DISTRICT LAND REGISTRAR KILGORIS 5TH RESPONDENT

(Being an application for extension of time from the Ruling of the Environment and Land Court of Kenya at Kilgoris (M.N. Mwanyale, J. dated 6th May, 2025 in ELC Case No. 017 of 2024)

RULING

1. The applicant, Leonard Lenana Ketere, moved this Court by notice of motion essentially under Rule 4 of the Court of Appeal Rules seeking to be granted extension of time to file the notice of appeal out of time from the decision of the Environment and Land Court (ELC) at Kilgoris rendered on 6th May, 2025. The applicant explains the reason for the delay in lodging the appeal in time to be; difficulties in accessing the Court of Appeal-platform on 21st May, 2025 to lodge the notice of appeal; inability to raise legal fees in time to instruct his advocate to lodge the appeal in time; the applicant was ailing at the material time that he was prevented from acting with the promptitude to lodge the notice of appeal in time; the applicant pointed out that the delay of the period of eleven (11) days was not inordinate and is therefore excusable. He urged the Court to exercise its discretion and grant him extension of time to lodge the appeal out of time because he is apprehensive that if he is denied the chance to ventilate the



appeal, he would suffer irreparable loss due to an imminent execution. He maintained that his appeal has a high chances of success. The application is supported by the annexed affidavit of the applicant.

2. The application is opposed. Simon Leboo Morintat, swore a replying affidavit, on his own behalf and on behalf of his co- respondents, in opposition to the application. He deponed that the reasons given by the applicant for delay in lodging the appeal in time were not tenable. He stated that the reasons given were not plausible as no evidence was placed before the Court to support the applicant’s assertion that he was ailing at the material time that he was prevented from lodging the appeal in time. The respondent derided the chances of the intended appeal succeeding pointing out the fact that he was has been in possession of the suit parcel of land for a long time and even had a title for the same. He therefore urged the Court to disallow the application as in his view it lacked merit.
3. Counsel for both parties to the application filed their respective written submissions supporting their taken positions. Under Rule 4 of the Court of Appeal Rules this Court has unfettered discretion to grant extension of time for any steps to be taken outside the period limited by the Rules. However, the discretion has to be exercised judiciously. In *Gerald Kithu Muchanje vs. Catherine Muthoni Ngare & another* [2020] eKLR, the Court held that:

“It is now well settled that the decision whether or not to extend the time for appealing is essentially discretionally. It must be exercised judiciously, the guiding principles being that where there is sufficient reason for the delay, and the delay is not inordinate, extension should be granted.”
4. In the present application, this Court is satisfied by the reasons given by the applicant for the delay in lodging the notice of appeal in time. He essentially had three challenges which are excusable in the circumstances of this application. He had challenges in accessing the e-platform of the Court, he was ailing, and did not raise legal fees in time to enable him instruct an advocate to act on his behalf. Although the respondents were not convinced by the reasons advanced by the applicant for the delay in lodging the appeal in time, this Court formed the firm view that the delay of a period of eleven (11) days is not inordinate in the circumstances. The subject of appeal being land. It is only fair and just to allow the applicant to ventilate his right of appeal to this Court.
5. In the premises therefore, the application has merit. It is hereby allowed. The applicant is granted extension of time to lodge the appeal out of time. The notice of appeal shall be filed and served within fourteen (14) days. The record of appeal shall be filed and served within sixty (60) days of today’s date. The respondents shall have the costs of the application.

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

L. KIMARU

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JUDGE OF APPEAL

I certify that this is a true copy of original.

Signed

Deputy Registrar .

