



REPUBLIC OF KENYA



KENYA LAW
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**Kabuku v Wamugunda & 3 others (Civil Application E141 of 2025)
[2025] KECA 1861 (KLR) (7 November 2025) (Ruling)**

Neutral citation: [2025] KECA 1861 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NYERI
CIVIL APPLICATION E141 OF 2025
S OLE KANTAI, JA
NOVEMBER 7, 2025**

BETWEEN

ANTHONY KABIRU KABUKU APPLICANT

AND

MWENDE WAMUGUNDA 1ST RESPONDENT

JACKSON WAMUGUNDA 2ND RESPONDENT

CHARLES MAINA 3RD RESPONDENT

JOSEPHAT MWANGI 4TH RESPONDENT

(An application for extension of time in which to file Memorandum of Appeal against the Judgment of the Environment and Land Court of Kenya at Kerugoya (Cherono Chirchir, J.) delivered on 28th February, 2023 in E.L.C Civil Appeal No. 18 of 2019.)

RULING

1. I am asked by the applicant, Anthony Kabiru Kabuku in the Motion brought under rule 4 of the Court of Appeal Rules to be pleased to extend time in which he may file and serve Memorandum of Appeal out of time against the judgment delivered on 28th February, 2023. In grounds in support of the Motion and in his affidavit he says amongst other things that after judgment was delivered by Environment and Land Court (ELC) at Kerugoya he lodged a Notice of Appeal and applied for certified copies of proceedings and judgment which documents were supplied to his lawyers on 7th November, 2023; he was issued with a Certificate of Delay dated 10th July, 2024; that he was in financial problems and was not able to file Memorandum of Appeal on time; that he is a 76 year old citizen who was greatly affected by dismissal of his first appeal; that he accepts that the delay is inordinate; he prays that he be granted extension of time. He says further that the intended appeal has high chances of success because he was awarded the land in dispute in succession proceedings which judgment has never been challenged; that



the respondents will not be prejudiced if I allow the Motion. Attached to the application is a copy of the impugned judgment.

2. I have not seen any replying affidavit and I note that the respondent was served with a hearing notice on 21st October, 2025 through chwero advocates (chwe22adv@gmail.com chwero1advocates@gmail.com). They were informed of the hearing date and required to file written submissions but neither of the parties filed submissions.

The principles that apply in the exercise of discretion donated by the said rule 4 of our rules were set out in the oft-cited 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.”

3. The applicant here says that although he lodged a Notice of Appeal and applied for proceedings of ELC to enable him appeal he was unable to do so because he could not afford to pay court and attendant fees due to financial problems.

I note that judgment intended to be appealed was delivered on 28th February, 2023. Proceedings were supplied and there is a Certificate of Delay dated 10th July, 2024. The application is dated 23rd September, 2025, a period of about 14 months since Certificate of Delay was issued. The explanation given for delay is that the applicant was in financial straits; that he is 76 years old and that dismissal of his appeal by ELC was so devastating that it affected his health. I am prepared to accept this as a reasonable explanation for delay. The applicant says that the intended appeal which involves a dispute over ownership of land has high chances of success.

I do not think that the respondents will be prejudiced if the applicant appeals. I allow the Motion. Let record of appeal be filed within twenty one (21) days of today. Costs of the Motion will be in the intended appeal.

DATED AND DELIVERED AT NYERI THIS 7TH 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

