

**IN THE COURT OF  
APPEAL AT  
KISUMU**

**(CORAM: KIMARU, JA (IN  
CHAMBERS) CIVIL APPLICATION NO.  
E119 OF 2025 BETWEEN**

**EDWIN MBAKA MATARA.....APPLICANT**

**AND**

**MOCHUMBE OSINYO MEROKA.....1<sup>ST</sup> RESPONDENT**

**MARY MOCHUMBE.....2<sup>ND</sup>**

**RESPONDENT LAND REGISTRAR, NYAMIRA**

**COUNTY.....3<sup>RD</sup> RESPONDENT**

(Being an application for extension of time to lodge and serve the notice of appeal out of time from the Ruling of the Environment and Land Court of Kenya at Nyamira (D. O. Ohungo, J) dated 3<sup>rd</sup> April, 2025.

**in**

**ELCLOS NO. E006 of 2024)**

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**RULING**

1. **Edwin Mbaka Matara**, the applicant herein, moved the Court by notice of motion substantially under **Rule 4** of **Court of Appeal Rules** seeking to be granted extension of time to lodge and serve the notice of appeal out of time against the Ruling of the Environment and Land Court (ELC) delivered on 3<sup>rd</sup> April, 2025. The applicant gave the reason

for the delay to be the challenge he experienced with the  
Judiciary's e-filing system

when he attempted to file the notice of appeal on 17<sup>th</sup> April, 2025. He was only able to lodge the Notice of Appeal on 19<sup>th</sup> April, 2025. By that time, the period on which he was supposed to have lodged the notice of appeal by the Court of Appeal Rules had lapsed.

2. The applicant states that the delay of two (2) days was excusable and had been reasonably explained in the circumstances. The applicant asserts that he should be given a chance to ventilate his appeal before this Court, which in his view, has a high likelihood of success. He contends that the respondent will not suffer any prejudice if the Court grants the prayers sought in the application. The application is supported by the annexed affidavit of the applicant, and further grounds on the face of the motion.

3. The application is opposed. The 2<sup>nd</sup> respondent, **Mary Mochumbe** swore a replying affidavit in opposition to the application. The 1<sup>st</sup> and 2<sup>nd</sup> respondents were not convinced that there was a technical hitch in the Judiciary's e-filing platform that prevented the applicant from lodging the notice of appeal in time. They pointed out that if indeed that was the

case, they wondered why it took the applicant four (4) months to file the present application for extension of time before this Court. The 1<sup>st</sup> and 2<sup>nd</sup> respondents deponed that the intended appeal is meant to perpetrate a pattern of intimidation of the trial Judge that the applicant engaged in with a view of frustrating the just conclusion of the case. The 1<sup>st</sup> and 2<sup>nd</sup> respondents maintained that the applicant's conduct precludes the Court from exercising discretion in his favour by granting the prayers sought in the application. The 1<sup>st</sup> and 2<sup>nd</sup> respondents urged the Court to dismiss the application as it lacks merit.

4. This Court has carefully considered the application, the affidavits filed in support and in opposition to the application and the written submission filed by the 1<sup>st</sup> and 2<sup>nd</sup> respondents. For the record, the Court did not see any written submissions filed by the applicant. Under **Rule 4** of the **Court of Appeal Rules**, this Court has unfettered discretion to extend time for any steps to be taken that has been limited in time by the Rules. This discretion is exercised judiciously and not by whim or

caprice. In **Gicheru v. Attorney General [2024] KECA 150**

**CKLR**, Ochieng JA held thus:

***“It is trite that there is no maximum period of delay set out under the law. However, a prolonged and inordinate delay is more likely than not to disentitle the applicant to the leave. Likewise, the reason or reasons for the delay must be reasonable and plausible. In the case of Andrew Kiplagat Chemeringo v. Paul Kipkorir Bett [2018] eKLR, this Court stated:***

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

5. In the present application, the applicant explained that he was prevented from lodging the appeal in time due to technical hitch he experienced with the Judiciary e-filing system when he sought to file the notice of appeal on 17<sup>th</sup> April, 2025. He contacted the ELC’s registry to seek assistance but unfortunately the issue was not resolved by the end of the day. He was only able to lodge the notice of appeal on 19<sup>th</sup> April, 2025. However, by the time, he was already two days late. Although the 1<sup>st</sup> and 2<sup>nd</sup> respondents

expressed scepticism with the reason given by the applicant  
for failure to lodge the appeal

in time, this Court is persuaded that the applicant is deserving of the exercise of discretion by this Court in his favour. A delay of two (2) days, by any measure, is not inordinate. Although the intended appeal seeks to challenge an interlocutory Ruling of the ELC, (it would have been preferable for the applicant to have the suit substantially heard and determined on its merits), this Court formed the view that he should be given a chance to ventilate his appeal before this Court.

6. In the premises therefore, the application has merit and is allowed. The applicant is granted extension of time to file the notice of appeal out of time. The said notice of appeal shall be filed and served within **seven (7) days** of today's date. The record of appeal shall be filed and served within **thirty (30) days** of today's date. The 1<sup>st</sup> and 2<sup>nd</sup> respondents shall have the costs of the application in any event.

**Dated and delivered at Kisumu this 19<sup>th</sup> day of November, 2025.**

**L. KIMARU**

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

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

***Signed*  
DEPUTY REGISTRAR.**