

**IN THE COURT OF
APPEAL AT
KISUMU**

**(CORAM: KIMARU, JA (IN
CHAMBERS))**

**CIVIL APPLICATION NO. E117 OF
2025 BETWEEN**

JANE ADHIAMBO MUGA.....APPLICANT

AND

PAMELA ADHIAMBO OKELLO.....RESPONDENT

(Being an application for extension of time to serve the notice of appeal out of time from the Ruling of the Environment and Land Court of Kenya at Kisumu (S.O. Okongo, J) dated 8th October, 2024

in

ELC NO. E030 of 2024)

RULING

1. **Jane Adhiambo Muga**, the applicant herein moved the Court by notice of motion substantially made under **Rule 4** of the **Court of Appeal Rules** seeking to be granted extension of time to serve the notice of appeal out of time. The applicant further prayer for extension of time to file and serve the record of appeal within a period of twenty one (21) days. The applicant explained the reason for the delay in

lodging the appeal in time to be on account of the fact that
after the delivery of the Ruling that is

the subject of the intended appeal, on 8th October, 2024, the Court file disappeared from the Registry and was not traced until 4th January, 2025. The applicant was therefore unable to access the file to prepare the record of appeal in time. The application is supported by other grounds on the face of the application and the annexed affidavit of the applicant. She also filed a further affidavit in support of the application.

2. The application is opposed. The respondent, **Pamela Adhiambo Okello** filed a replying affidavit in opposition for the application. In it, she deponed that the applicant was not deserving of the exercise of discretion by this Court in her favour due to the inordinate, inexcusable and unexplained delay in filing the present application before this Court. The respondent maintained that the applicant was guilty of laches and should not be entertained by this Court. She urged the Court to dismiss the application as it lacks merit.

3. Both counsel for the applicant and the respondent filed written submission in support of their respective client's opposing positions. Both counsel appreciated that this Court in determining the application is exercising judicial

discretion

under the jurisdiction granted to it by **Rule 4** of the **Court of Appeal Rules**. The exercise of this discretion is guided by principles laid down in a line of decided cases that both counsel are aware of. The said principles were succinctly summarized in the **Leo Sila Munyao Mutiso v. Rose Hellen Wangari Mwangi [1999] 2EA 231** where the Court held thus:

“The decision whether or not to extend time is discretionary. The Court in deciding whether or not to grant an extension of time takes into account the following matters: first, the length of the delay, second, the reasons for the delay, thirdly, (possible), 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.”

4. In the present application, this Court has been persuaded that indeed the applicant was prevented from filing the record of appeal in time due to the unavailability of the court file from the time the decision was rendered by the Superior Court to the time of its discovery about eight (8) months later. Even if the Court was not convinced by the reasons given, the delay of eight (8) months is not inordinate in the circumstances of this

application. The delay has been explained to the satisfaction of this Court. The respondent will not be prejudiced. If she will

suffer any prejudice, it will be compensated by an award of costs.

5. In the premises therefore, the application is merited. It is hereby allowed. The applicant is granted extension of time to file and serve 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 **twenty one (21) days** of today's date. The respondent shall have the costs of the application in any event.

Dated and delivered at Kisumu this 19th day of November, 2025.

L. KIMARU

**JUDGE OF
APPEAL**

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

Signed

DEPUTY REGISTRAR.