



Mwimali & 2 others v Ambani & another (Civil Application E089 of 2025) [2025] KECA 1887 (KLR) (7 November 2025) (Ruling)

Neutral citation: [2025] KECA 1887 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT KISUMU
CIVIL APPLICATION E089 OF 2025
LK KIMARU, JA
NOVEMBER 7, 2025**

BETWEEN

**CHRISTINE LUBANGA MWIMALI 1ST APPLICANT
RONALD EVANS OTINGA LUBANGA (SUING AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF HENRY LUBANGA MWIMALI - DECEASED) 2ND APPLICANT
MICHAEL OTINGA MWIMALI 3RD APPLICANT**

AND

**JOHNSON WYCLIFFE AMBANI 1ST RESPONDENT
JOHN OMUYULA M ODINGA 2ND RESPONDENT**

(Being an application for extension of time to file and serve record of Appeal from the Judgment of the Environment and Land Court of Kenya at Kakamega (D.O. Ohungo, J) dated 30th January, 2024 in ELC Case No. 191 of 2016)

RULING

1. The applicants moved this Court in a notice of motion made under Rule 4 of the Court of Appeal Rules seeking to be granted extension of time to file the Memorandum of Appeal and Record of Appeal out of time. The applicants state that they were out of time for a few days in lodging the Memorandum and Record of appeal. They deponed that the delay was not deliberate or inordinate. They attributed the delay to the failure by the trial court (Environment and Land Court) to supply them with the duly certified typed copies of proceedings in time and the lack of funds on the part of the applicants to enable them instruct a lawyer to act on their behalf in the appeal. They contend that the appeal raises serious triable and arguable issues which they should be allowed to ventilate before this Court. They further asserted that the respondent will suffer no prejudice as the determination of the appeal will be in the interest of justice. The application was supported by the annexed affidavit of the applicant.



2. Despite the respondents being served with the hearing notice of the date the application was listed for hearing, they neither filed a replying affidavit in opposition to the application or submissions thereof. The application is therefore unopposed.
3. The principles to be considered by the Court in determining such applications were set out in the case of *Leo Sila Mutiso v. Hellen Wangari Mwangi* [1999] 2EA 231. They include the length of delay, the reason for the delay, the possibility that the appeal may succeed and the degree of prejudice, if any, that the respondent may suffer.
4. In the present application, it is evident that the applicants have made a case for this Court to exercise its unfettered discretion in their favour. They have satisfactorily explained the reason for the delay in lodging the Memorandum and the Record of appeal in time. The delay is not inordinate in the circumstances of this application. This Court takes note that the subject matter of the dispute is land between relatives. It is only fair and just that they be given a chance to ventilate their appeal before this Court so as to bring some semblance of finality to the matters in dispute.
5. In the premises therefor, the application is hereby allowed. The applicants are hereby granted extension of time to file and serve the Memorandum and the Record of appeal out of time. They shall do so within fourteen (14) days of today's date. There shall be no orders as to costs.

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.

