



**Lowoton & another v Lorogoi & 5 others (Civil Application
E069 of 2025) [2025] KECA 2033 (KLR) (27 November 2025) (Ruling)**

Neutral citation: [2025] KECA 2033 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT ELDORET
CIVIL APPLICATION E069 OF 2025
PM GACHOKA, JA
NOVEMBER 27, 2025**

BETWEEN

NICHODEMUS EMURON LOWOTON 1ST APPLICANT

NGAMIA CONSULTING COMPANY LIMITED 2ND APPLICANT

AND

CHARLES EJORE LOROGOI 1ST RESPONDENT

KANU TURKANA COUNTY 2ND RESPONDENT

TURKANA COUNTY LAND REGISTRAR 3RD RESPONDENT

DAVID MERIMUG 4TH RESPONDENT

**MINISTRY OF LANDS, PHYSICAL PLANNING, HOUSING & URBAN AREA
MANAGEMENT, TURKANA COUNTRY (SIC) 5TH RESPONDENT**

KENYA AFRICAN NATIONAL UNION 6TH RESPONDENT

*(An application for leave to file and serve a record of appeal out of time
from the judgment and decree of the Environment and Land Court
at Kitale (IUR Dr. F. Nyagaka, J.) delivered on 25th March 2025)*

RULING

1. In their Notice of Motion dated 14th October 2025, the applicants seeks leave of this Court to file and serve the record of appeal out of time against the judgment and decree of the Kitale Environment and Land Court (ELC) (Nyagaka, J.) delivered on 25th March 2025. The application has invoked the provisions of rules 2, 4, 74 (1) and 76

1.



(sic) sic) of the Court of Appeal Rules.

2. The application is premised on the grounds on the face of the Motion and the supporting affidavit of the 1st applicant. The facts giving rise to the application are that the applicants are dissatisfied with the judgment delivered on 25th March 2025. In the resulting circumstances, a notice of appeal was lodged. That though intending to file their record of appeal, the applicants were hurdled by the fact that the trial judge was on transfer to Migori proceeding to the said station with the trial court file.
3. The applicants urged this Court to allow the application for the following reasons: the delay in filing and serving the record of appeal was unintentional and inadvertent as the trial judge was on transfer to Migori and went with the file. It therefore took time before the file was brought back to Kitale for typing of proceedings; the length of delay was excusable; the delay in filing the record of appeal was not prejudicial to the respondents; and the applicant had a good appeal with overwhelming chances of success and stood to suffer irreparable loss and damage if the application was denied.
4. The 1st, 2nd and 3rd respondents opposed the application. They relied on the replying affidavit of the 1st respondent sworn on 21st November 2025. The respondents challenged that the notice of appeal adduced failed to demonstrate when it was lodged and served on the respondents. Similar allegations were made regarding the letter dated 2nd April 2024 seeking for typed proceedings. They complained that the applicants has not indicated whether they had received the proceedings and on what day. In summary, the respondents urged that the application fell short of the requirements set out in law. They prayed that the application be dismissed with costs.
5. Parties filed written submissions that elaborately persuaded this Court to find in their favor. The applicants filed written submissions dated 20th November 2025 while the 1st, 2nd and 3rd respondents filed written submissions dated 21st November 2025.
6. Rule 4 of the Court of Appeal Rules 2022 gives this Court discretionary powers to extend time. This Court in *Karny Zahrya & another vs. Shalom Levi* [2018] eKLR stated the following as issues to be considered in an application under rule 4 of this Court's Rules:

“Some of the considerations to be borne in mind while dealing with an application for extension of time include the length of the delay involved, the reason(s) for the delay, the possible prejudice, if any, that each party stands to suffer depending on how the court exercises its discretion; the conduct of the parties; the need to balance the interests of a party who has a decision in his or her favour against the interest of a party who has a constitutionally underpinned right of appeal; the need to protect a party's opportunity to fully agitate its dispute, against the need to ensure timely resolution of disputes; the public interest issues implicated in the appeal or intended appeal; and whether, prima facie, the intended appeal has chances of success or is a mere frivolity. In taking into account the last consideration, it must be born in mind that it is not the role of a single judge to determine definitively the merits of the intended appeal. That is for the full Court if and when it is ultimately presented with the appeal.”
7. It is common ground that the judgment was delivered on 25th March 2025 and this application was filed 7 months later. The applicants have a duty to explain the delay for me to exercise my



discretion in their favour. The exercise of discretion is a judicious act that must be based on good reasons and the obligation to give the reasons always lies on the applicant. Before me are applicants who have casually approached the Court. The only reason given for the delay is that the trial judge was on transfer and that he carried the file to the new station. If that is so, the next question that the applicants must answer is when the file was returned to the registry. There is no evidence that the file was not available, and the applicants do not even state whether they have received the proceedings. I agree with the respondents that the delay is not explained. Indeed, I note that as stated by the respondents, the applicants have not even annexed a memorandum of appeal and the letter requesting proceedings was not even copied to them

8. At the risk of repetition, the main reason given by the applicants for the delay is that they were unable to prepare their record of appeal in good time because the trial judge went on transfer with the file, the subject of the appeal. I find that this is not a sufficient reason to explain the delay, as it is just a general statement. The applicant did not even copy the letter requesting the proceedings to the respondents and did not even state that they have now obtained the proceedings and a certificate of delay.
9. In the circumstances, I am not satisfied that the delay of about 7 months is well explained and I decline to exercise my discretion in favour of the applicant. Consequently, the application is dismissed in its entirety with costs to the respondents.

DATED AND DELIVERED AT ELDORET THIS 27TH DAY OF NOVEMBER 2025.

M. GACHOKA C.Arb, FCI Arb.

I certify that this is a True copy of the original

Signed

Deputy Registrar

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Judge Of Appeal

