

**IN THE COURT OF
APPEAL AT MOMBASA**

(CORAM: NGENYE, JA)

CIVIL APPLICATION NO. E071 OF

2025 BETWEEN

KARIUKI MATHU 1ST

APPLICANT NJERI MATHU.....2ND

APPLICANT

NGUGI MATHU 3RD

APPLICANT

NJANJA MATHU 4TH APPLICANT

AND

COLIN STUART.....1ST RESPONDENT

STACY ALUOCH OJUANG'.....2ND RESPONDENT

COUNTY LAND REGISTRAR

KWALE LAND REGISTRY 3RD RESPONDENT

JULIA SUSAN STUART 4TH RESPONDENT

(Being an application for leave to file and serve the Notice of appeal out of time against the whole of the Ruling of the Environment and Land Court of Kenya at Kwale (L. L. Naikuni, J.) dated 17th July 2025

in

ELC No. E057 of 2024)

RULING

1. By a Notice of Motion dated 8th August 2025 brought under **Articles 50** and **159** of the Constitution, **Sections 3A** and **3B** of the **Appellate Jurisdiction Act, Rules 4, 43, 44(1), 45(1), 49 and 77(1)** of **Court of Appeal Rules,**

2022 and all other

enabling provisions of law, the applicants seek the following orders:

“a) Spent;

b) That this Honourable Court be pleased to grant leave for the Appellants/Applicants to lodge the Notice of Appeal against the whole of the Ruling of the Environment and Land Court of Kenya at Kwale delivered by Hon. Justice L. L. Naikuni on 17th July, 2025 in ELCLC No. E057 of 2024 out of time;

c) THAT this Honourable Court be pleased to extend the time for lodging and serving the Notice of appeal;

d) THAT the Notice of Appeal annexed hereto that has been filed and served upon the Respondents be deemed as duly filed and served from the date of granting leave herein; and

e) THAT costs of the application to abide the outcome of the appeal.”

2. The application is supported by the grounds on its face and an affidavit of Kariuki Mathu, the 1st Applicant, on his behalf and on behalf of other applicants sworn on 8th August 2025.

3. Mr. Mathu deposes that a ruling in the Environment and Land Court at Kwale in **ELC LC No. E057 of 2024** was delivered by

L. L. Naikuni, J. on 17th July 2025, allowing the 1st respondent's Preliminary Objection dated 5th December 2024 challenging the jurisdiction of the court, thereby staying the proceedings therein and referring the dispute to arbitration and striking out the applicants' plaint with costs;

that a copy of the ruling was uploaded on the Judiciary CTS Portal on 28th July 2025 for parties' access; that the applicants were

dissatisfied with the said ruling and intend to appeal against it, that pursuant **rule 75(2)** of this **Court's Rules, 2022**; that a Notice of Appeal ought to have been lodged by 31st July 2025; that, however, the Notice of Appeal was lodged and served on 8th August 2025, 7 days after the due date; that the delay was not deliberate, but was occasioned by the delay of acquiring a copy of the impugned ruling; that the delay was also not inordinate and if the same is deemed as properly filed, will not prejudice the respondents; that the instant application is also not brought with undue delay; and that, it is in the interest of justice that the application is allowed as prayed.

4. It suffices to state that only the 2nd respondent in opposing the application filed a replying affidavit on 27th October 2025. She was represented in the virtual hearing by learned counsel **Mr. Willy Enock**, who relied on written submissions of even date. Learned counsel **Mr. Kenga** who was present held brief for **Mr. Joram Wang'ombe** for the 1st respondent and **Ms. Chengo** for the 4th respondent. The **Honourable Attorney General** for the 3rd Respondent did not attend Court despite service with a hearing notice on 22nd October 2025.
5. At the outset, I wish to state that Mr. Kenga informed the Court that the 2nd respondent had filed written submissions dated 27th October 2025. Interestingly, those submissions are not on Court record as put to me, which he submitted Ms. Chengo was supporting.
6. Back to the 2nd respondent's Replying Affidavit, it is deposed that the application is frivolous, misconceived and

a blatant abuse of the court process as it is founded
falsehoods and a deliberate misrepresentation of facts
intended to justify the

applicants' inaction; that the date of delivery of the ruling was fixed in open court in the presence of all counsel including counsel for the applicants; that counsel for applicants being aware of the date of the delivery of the ruling, deliberately failed to attend court; that no reason was proffered for not attending court on this date; that the learned Judge delivered the ruling orally in open court, consequent to which all parties knew of the outcome of the ruling; that it is therefore clear that the applicants' absence on the date was negligent, a lack of diligence and a disinterest in the matter; that such conduct cannot be blamed on the court or its administrative processes; that it also cannot be true that the delay in filing the Notice of Appeal was occasioned by failure to upload the ruling on the Judiciary CTS Portal; that in any case, under **rule 77 of Court's Rules, 2022** there is no requirement that the ruling ought to have either been typed or uploaded unto the Judiciary CTS Portal for a Notice of Appeal to be filed; that further, the ruling was uploaded on 28th of July 2025 which was still within the statutory 14 days' period for lodging a notice of appeal under rule 77; and that, therefore, the ruling having been uploaded in time, there was no justification for lodging the Notice of Appeal out time.

7. It is also deposed that the applicants have also not tendered any evidence to demonstrate any efforts they made to obtain a copy of the ruling earlier than the date they purport they obtained it; that the remedy for extension of time being discretionary and equitable in nature, is only available to a party who demonstrates

sufficient cause for the delay, acts promptly and approaches the Court in good faith; that the

applicants in this case have not met the threshold for grant of the remedy; and that it is in the interest of justice, fairness and proper case management that the application is disinclined and dismissed with costs.

8. At the virtual hearing of the application on 28th October 2025, learned counsel for the applicants **Messrs. Nzavi Advocates** did not show up although they filed written submissions dated 2nd September 2025. For emphasis only, for the part of the respondents, only the 2nd respondents' submissions are on record. I have respectfully considered the parties submissions which essentially are a regurgitation of the averments in support of, and in opposition to, the application. I therefore need not replicate them. It however suffices to state that the applicants relied on, *inter alia*, this Court's decisions of **Niazsons (K) Limited vs. China Road & Bridge Corporation (K) (2000) KECA 198 (KLR)** and **Stanley Kahoro Mwangi & 2 others vs. Kanyamwi Trading Company Limited (2015) eKLR** for the principles that should be considered in an application for extension of time to file a notice of appeal.
9. The 2nd respondent on her part cited this Court's decisions of **Leo Sila Mutiso vs. Hellen Wangari Mwangi (1999) 2 EA 23; Fakir Mohammed vs. Joseph Mugambi & 2 Others (2005) eKLR;** and **Andrew Kiplagat Chemaringo vs. Paul Kipkorir Kibet (2018) eKLR;** and the Supreme Court decision of **Nicholas Kiptoo Arap Korir Salat vs. IEBC & 7 others (2014) eKLR**, all speaking to the principles that the Court should consider in

extending time to do anything that a party is required to do under the Court's Rules.

10. It has been said time and again and is now settled law that enlargement of time lies in the discretion to be exercised by the Court. The discretion should however be exercised judiciously, in accordance with sound principles of law and not out of whim, caprice or sympathy. The Supreme Court stressed the considerations that should guide a Court in granting the remedy of extension of time in the case of **Nicholas Kiptoo (supra)** as follows:

“i. Extension of time is not a right of a party. It is an equitable remedy that is only available to a deserving party at the discretion of the court;

ii. A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the court;

iii. Whether the court should exercise the discretion to extend time, is a consideration to be made on a case-to-case basis;

iv. Whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the court;

v. Whether there will be any prejudice suffered by the respondents if the extension is granted;

vi. Whether the application has been brought without undue delay; and

vii. Whether in certain cases like election petition public interest should be a consideration for extending time.”

11. In the instant application, the applicants aver that they did not file the Notice of Appeal within time because the impugned ruling was not uploaded in the Judiciary CTS Portal on time so as to allow them to take necessary action. A glance at paragraph 4 of the supporting affidavit to the Notice of Motion indicates that the applicants agree with the respondents that the ruling was uploaded on the Judiciary CTS Portal on 28th July 2025 for parties' access. For the avoidance of doubt, the deponent states as follows:

“4. THAT however, a copy of the full Ruling was uploaded on the Judiciary CTS Portal on the 28th July 2025 for parties' access. (Annexed herein and marked “KM-3” is a copy of a screenshot of the Court Decision section in the Judiciary CTS Portal.”

12. The 2nd respondent at paragraph 9 of the replying affidavit avers as follows:

“9. THAT, without prejudice to the foregoing, I am aware that the said ruling was uploaded onto the Judiciary CTS portal on the 28th of July, 2025, which was still well within the statutory fourteen (14) days' period prescribed for lodging a Notice of Appeal under Rule 77(2) of the Court of Appeal Rules, 2022. (Annexed herewith and marked SA-1 is a true copy of the ruling).”

13. The impugned ruling having been delivered on 17th July 2025 and having been uploaded on 28th July 2025, it means that the applicants had 3 days before the expiration of 14 days within which the Notice of Appeal under **rule 77(2)** ought to have been lodged. The only reason advanced by

the applicants, being that the ruling was not uploaded on
Judiciary CTS portal

on time to have occasioned the delay in lodging the Notice of Appeal is therefore not factual. It is also discounted and rebutted by the evidence demonstrating that it was uploaded before the expiration of 14 days. This then called upon the applicants to explain the reasons for the delay in not lodging the Notice of Appeal within the last 3 days of the time limitation. As was held in the case of **Fakir Mohammed (supra)** and other numerous decisions of this Court, the delay must be satisfactorily explained. To me, the applicants seems to sweep under the carpet the fact that they ought to give sufficient and satisfactory reason for not coming to Court timeously.

14. My take is that even if a delay is of one day, it must be satisfactorily explained. To begin with, the applicants have misrepresented the facts that the uploading of the impugned ruling was done late, yet the evidence as observed above attests to the contrast. For this reason, I am not satisfied that the applicants have given a satisfactory reason to convince me to exercise my discretion to extend time within which to file the Notice of Appeal.
15. Indeed, as submitted by the 2nd respondent, the management of court's time is of essence because it aids the court in the just and expeditious adjudication of justice. If parties were allowed to do any act(s) at the time of their choice merely because they can come to court and seek indulgence would mean that the wheels of justice would either be slowed or come to a halt altogether;

administration of justice would be in disarray. Conversely, parties who respect court's processes and

timelines would be held at the behest of indolent and slow pacers who wish that courts move at their convenience. I say so because this Court has numerously rendered itself that the Court's Rules ought to be followed and observed to the letter.

16. This Court's decision of **Andrew Kiplagat Chemaringo vs. Paul Kipkorir Kibet [2018] eKLR** that was aptly cited by the 2nd respondent speaks volumes in respect to the importance of explaining the delay as follows:

“A plausible and satisfactory explanation for delay is the key that unlocks the Court's flow of discretionary favour. There has to be valid and clear reasons upon which discretion can be favourably exercised.”

17. Accordingly, for want of demonstration of a plausible, consistent and excusable cause of the delay in filing the Notice of Appeal on time as required under **rule 4** of this **Court's Rules, 2022**, I am unable to exercise my discretion in favour of the applicants.

18. In the end, the Notice of Motion dated 8th August 2025 is hereby dismissed with the costs to the 1st, 2nd and 4th respondents.

Dated and delivered at Mombasa this 21st day of November, 2025.

G. W. NGENYE-MACHARIA

.....
JUDGE OF APPEAL

I certify that this is the true copy of the original

signed

DEPUTY REGISTRAR