

**IN THE COURT OF APPEAL
AT ELDORET**

CORAM: MATIVO, JA (IN CHAMBERS)

CIVIL APPLICATION NO. NAK E058 OF

2025 BETWEEN

**PAULO KIPLAGAT BUSIENEI.....1ST
APPLICANT
BENJAMIN KIPKOSGEI LAGAT.....2ND
APPLICANT
ELIAS CHERUIYOT LAGAT.....3RD
APPLICANT AND**

PIUS KIAMAIIYO MOSBEY & 5 OTHERS.....RESPONDENT

(Being an application for extension of time against the judgment of the Environment and Land Court of Kenya at Eldoret (E. Obaga, J.) dated 24th October, 2024

in

ELC Case No.E109 of 2022).

RULING

1. Paulo Kiplagat Busienei, Benjamin Kipkosgei Lagat & Elias Cheruiyot Lagat (the applicants) have approached this Court by way of notice of motion dated 12th September 2025 seeking extension of time to file and serve the respondent with notice of appeal and record of appeal and serve the same within such time as the court shall deem fit.

2. The application is premised on Sections 3A, 3B & 5 of the Appellate Jurisdiction Act and Rule 4 of this Court's Rules, 2022. It is supported by grounds on its body and a supporting affidavit sworn on 12th September 2025 by Benjamin Kipkosgei Lagat who is the 2nd applicant and a supplementary affidavit sworn on 26th November 2025 by Joseph Cheptarus who is the applicants' advocate on record.

3. The grounds in support of the application are that:- (a) the Judgment was rendered on 24th October 2024 *ex-parte* the applicants having been denied the opportunity to be heard in the matter; (b) the notice of appeal dated 24th October 2024 was filed on 4th November 2024 and lodged on 21st November 2024 together with a letter bespeaking proceedings filed on 4th November 2024; (c) the certified & typed proceedings were furnished by the deputy registrar to the applicants vide letter dated 31st July 2025; (d) the applicants are yet to be issued with a certified decree from the court; (e) a certificate of delay was issued on 7th August 2025 after requesting the same vide letter dated 19th March 2025; (f) the intend appeal is not frivolous and raises triable issues; (f) Civil Application No. 48 of 2024 arising from Eldoret E&LC Case No. E019 of 2022

(O.S) was dismissed for non attendance which was occasioned by technological challenges on 13th March 2025.

4. The application is opposed vide replying affidavit sworn by the 1st respondent on 26th November 2025 on the following grounds: (a) the applicants did not need certified proceeding to file a notice of appeal; (b) the intended appeal is not merited since the applicants sold land to the respondents and the respondent have developed permanent dwellings on the suit properties; (c) the 2nd and 3rd applicants partially admitted the respondents claim and are thus only interested in frustrating the respondents by denying them title deeds; (d) the court's discretion should not be exercised in favour of the applicants since the respondents will be prejudiced by being denied the right to own the land which they acquired by valuable consideration.
5. The applicants' counsel vide submissions dated 25th November 2025 reiterated the contents of the 2nd applicant's supporting affidavit and cited the case of **Andrew Kiplagat Chemaringo vs. Paul Kipkorir Bett [2018] eKLR** in submitting that the applicants deserve leave in exercise of discretion of this Court.

6. On the part of the respondents, vide submissions filed on 26th November 2025, counsel submitted that the applicants do not deserve this Court's discretion since they did not attend to a similar application which had been listed on 20th February 2025. Therefore, the applicants have not shown an interest in following up their cases even when they are represented by counsel. Therefore, the instant application is an afterthought.
7. Counsel maintained that there has been a delay of 11 months and therefore the discretion of the court should not be used to delay the course of justice.
8. I have considered the application, the affidavits on record and submissions by counsel and the law. The only question for determination is whether the applicants have met the threshold for the exercise of the Court's discretion to grant leave for them to file and serve a notice of appeal and record of appeal out of time.
9. The Supreme Court of Kenya pronounced itself in the question of extension of time in the case of **Andrew Kiplagat Chemaringo vs. Paul Kipkorir Kibet [2018] eKLR**, and stated as follows:

“the law does not set out any minimum or maximum 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 court’s flow of discretionary favour. There has to be valid and clear reasons, upon which discretion can be favourably exercisable.”

10. Based on the cited decision, it is apparent that this application will be dispensed by determining whether the applicants have tendered sufficient reasons for not filing their notice of appeal and record of appeal within the stipulated time and whether the respondent will suffer any prejudice should the application be allowed.

11. The delay in filing and service of the record of appeal has been satisfactorily explained by the certificate of delay dated 7th August 2025 annexed to the applicant’s application. I have also looked at the fourteen grounds in the memorandum of appeal and I am satisfied that the appeal is arguable. The respondents will not be prejudiced if this application is granted.

12. The application is thus allowed; the annexed notice of appeal be and is hereby deemed as properly filed and served. The

applicants are directed to file and serve a record of appeal within 30 days of this ruling. Costs shall abide the appeal.

Dated and delivered at Eldoret this 27th day of November, 2025.

J. MATIVO

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

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

Signed.

DEPUTY REGISTRAR.

