



REPUBLIC OF KENYA



**KENYA LAW**  
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**Opara v Macharia & another (Civil Application E068 of 2025)  
[2025] KECA 2048 (KLR) (27 November 2025) (Ruling)**

Neutral citation: [2025] KECA 2048 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT ELDORET  
CIVIL APPLICATION E068 OF 2025  
PM GACHOKA, JA  
NOVEMBER 27, 2025  
[IN CHAMBERS]**

**BETWEEN**

**CLEOPHAS BARASA WANJALA OPARA ..... APPLICANT**

**AND**

**ISAAC MACHARIA ..... 1<sup>ST</sup> RESPONDENT**

**JAMES WANYOIKE ..... 2<sup>ND</sup> RESPONDENT**

*(An application for extension of time to file a notice of appeal and record of appeal against the judgment and decree of the Kitale Environment and Land Court (C.K. Nzili, J.) delivered on 17th September 2025 in ELC Case No. 6 of 2019)*

**RULING**

1. The Notice of Motion before me is dated 13<sup>th</sup> October 2025. It is stated to be governed by sections 3A and 79G of the *Civil Procedure Act* and rules 4, 77 and 84 the *Court of Appeal Rules* 2022. Before delving into the merits or otherwise of the application, I must point out that this court derives its inherent jurisdiction solely from the *Appellate Jurisdiction Act* and the Rules thereunder. It therefore befalls that any provisions cited outside the parameters of that statute do not apply to the present application.
2. The applicant has beseeched this Court to extend time within which the applicant may file and serve a notice of appeal and record of appeal against the judgment and decree of Nzili, J. delivered on 17<sup>th</sup> September 2025 in Kitale ELC No. 6 of 2019. The applicant also prayed that the annexed notice of appeal and memorandum of appeal annexed to the application be deemed as duly filed. Finally, the applicant prays that the costs of the application be in the cause.
3. The application is buttressed by the grounds on its face and the supporting affidavit of the applicant sworn on 13<sup>th</sup> October 2025. The facts giving rise to this application are that when the impugned



judgment was delivered on 17<sup>th</sup> September 2025, the applicant instructed its erstwhile advocates B.N. Munialo & Company Advocates to pursue an appeal. However, those instructions were not discharged. The applicant was thus cognizant that he had not filed his notice of appeal within the 14-day statutory required period.

4. The applicant urged this Court to allow the application on account of the following reasons: the delay was not deliberate, inordinate, or prejudicial to the respondents and arose solely from change of counsel and the need to obtain typed proceedings; the intended appeal raised weighty and arguable issues of law and fact; and it was in the interest of justice and fairness that the orders sought be granted to enable the applicant ventilate his appeal on the merits.
5. The applicant filed written submissions and a list of authorities dated 12<sup>th</sup> November 2025. He urged this Court to allow the application as prayed.
6. The discretionary power to file an appeal out of time is set out in Rule 4 of this Court's Rules. The governing principles were set out by this Court in the case of *Wasike v. Swala* [1984] KLR 591 as follows:

“as rule 4 now provides that the Court may extend the time or such terms as it thinks just, an applicant must now show, in descending scale of importance, the following factors:

- a. That there is merit in his appeal.
- b. That the extension of time to institute and/or file the appeal will not cause undue prejudice to the respondent; and
- c. That the delay has not been inordinate.”

7. I have considered the application and the grounds enunciated therein. The applicant has explained that the delay in filing the notice of appeal was not deliberate and occasioned by the change of advocates. I also note that the application was filed timeously, that is 26 days from the date of judgement.
8. The main prayer sought is for leave to file the notice of appeal and memorandum of appeal out of time. The memorandum of appeal can only be filed after the notice of appeal has been filed and it's not clear from the application whether the applicant has obtained the proceedings.
9. Accordingly, the order that befalls this Court is to allow the applicant to file the notice of appeal within 7 days from the date of this order. Thereafter, the applicant will file the record of appeal within 60days. The costs of the application shall abide the outcome of the appeal.

**DATED AND DELIVERED AT ELDORET THIS 27<sup>TH</sup> DAY OF NOVEMBER 2025.**

**M. GACHOKA C.Arb, FCI Arb.**

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**JUDGE OF APPEAL**

I certify that this is a True copy of the original

*signed*

**DEPUTY REGISTRAR**

