

**IN THE COURT OF
APPEAL AT ELDORET**

**(CORAM: WARSAME J.A. (IN
CHAMBERS)) CIVIL APPLICATION NO.**

E049 OF 2025 BETWEEN

**SARAH CHESIRE KIPNYOLLEI (Suing as
the legal representative of the estate of
KIPNYOLLEI ARAP TUM).....APPLICANT**

AND

PATRICK KARIUKI WAITHAKA.....1ST RESPONDENT
ROBERT KIMANI WANJIKU.....2ND RESPONDENT
DAVID CHERUIYOT RONO3RD
RESPONDENT

*(An application for extension of time to file a notice of appeal
from the ruling and order of the Environment and Land Court
of Kenya at Kitale (Nzili, J.) delivered on the 11th June 2025*

in

ELC Case No. 98 of 2015)

R U L I N G

1. The applicant has filed an application dated 3rd August 2025 seeking extension of time to file a notice of appeal out of time under **Rule 4** of the Court of Appeal Rules. The applicant seeks to challenge a ruling delivered on 11th June 2025 by the Environment and Land Court (Nzili, J) at Kitale in Case No. 98 of 2015, dismissing the applicant's application to be joined as an interested party to the said suit.

2. The backdrop to this application is a land dispute in which the late Kipnyollei Arap Tum was a party. The Environment and Land Court delivered an adverse ruling on 11th June 2025. According to the applicant, who is suing as the legal representative of the estate of the late Kipnyollei Arap Tum, she was not informed timeously that the ruling had been delivered, and consequently could not make a timely decision on whether to file an appeal.
3. The applicant avers that she only learned of the ruling when she visited her advocate's office sometime in late June 2025. She deposes that she is a resident of Ziwa Township in Uasin Gishu County and has always kept in contact regarding the matter by physically visiting the advocate's office in Eldoret Town. She further states that she is an elderly woman who is not often in contact with the said advocate due to her inability to access and operate a mobile phone for purposes of regular communication.
4. In support of this application, the applicant has annexed a draft notice of appeal and a draft memorandum of appeal, as well as evidence of having requested typed proceedings from the Environment and Land Court. The applicant submits that

she has demonstrated her intention to pursue the appeal,
that the appeal raises arguable grounds, that the delay was
occasioned

by factors outside her control, and that she should not be denied the opportunity to challenge the ruling on purely procedural grounds.

5. I have considered the application, the grounds advanced, and the applicable legal principles. The law governing applications for extension of time is well settled. As stated in **Abdul Aziz Ngoma vs. Mungai Mathayo [1976] eKLR**, this Court's discretion to extend time under Rule 4 only arises after "sufficient reason" for extending time has been established. Other considerations such as the success of the absence of prejudice and the prospects of success may then be considered.
6. In **Fakir Mohamed vs. Joseph Mugambi & two others, Civil Application No. Nai. 332/04**, the Court elaborated that factors to be considered include: the period of delay, the reason for the delay, the chances of the appeal succeeding, the degree of prejudice to the respondent, the effect on public administration, the importance of compliance with time limits, and the resources of the parties.
7. The notice of appeal should have been filed within 14 days of 11th June 2025, which would have been by 25th June 2025.

The

present application was filed on 3rd August 2025, constituting a delay of approximately 39 days beyond the prescribed period. While this delay is not excessive when compared to cases involving months or years of delay, it nonetheless requires adequate explanation covering the entire period.

8. The applicant's explanation centers on three main contentions: her advanced age, her physical distance from Eldoret Town, and her inability to communicate with her advocate by telephone. She states that these factors prevented her from timeously instructing her advocate to file the notice of appeal.
9. I have considered this explanation with care. In my view, the suggestion that a litigant in ongoing court proceedings cannot access or operate a mobile phone, while potentially true in individual cases, cannot absolve a party of the responsibility to maintain reasonable contact with their legal representative in matters of importance. Alternative means of communication remain available, whether through family members, neighbors, or regular physical visits to the advocate's office. A reasonably diligent litigant aware that a court's decision is imminent would ordinarily establish reliable

arrangements to be promptly

informed of the outcome, particularly in a matter concerning land rights.

10. The respondents having failed to file a response have not demonstrated any specific prejudice that would result from granting the extension.
11. In the end, while the explanation for delay is unsatisfactory, the delay period is not excessive, and the interests of justice favor allowing the applicant an opportunity to pursue her appeal on the merits.
12. The upshot of my findings above is that the application is allowed. I direct the applicant to file the notice of appeal within 14 days.
13. I make no orders to cost

Dated and delivered at Nakuru this 2nd day of December, 2025.

M. WARSAME

.....
JUDGE OF APPEAL

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

Signed _

DEPUTY

REGISTRAR