



REPUBLIC OF KENYA



**Kebut v Lagat (Civil Application E050 of 2025)
[2025] KECA 2056 (KLR) (2 December 2025) (Ruling)**

Neutral citation: [2025] KECA 2056 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT ELDORET
CIVIL APPLICATION E050 OF 2025
MA WARSAME, JA
DECEMBER 2, 2025**

BETWEEN

DICKSON KIPROP KEBUT APPLICANT

AND

WILLIAM RERIMOI LAGAT RESPONDENT

(An application for extension of time to file a notice of appeal from the decision of the Environment and Land Court of Kenya at Iten (Nzili, J) delivered on 26th June 2023 in ELCA No. E021 OF 2022)

RULING

1. The applicant herein is desirous of pursuing an appeal against the judgment delivered by the Environment and Land Court (Nzili, J.) on 26th June 2023 which appeal was determined in the respondent's favour. Consequently, he has filed the instant application dated 29th April 2025 seeking extension of time to file the appeal and that the court validate the notice of appeal dated the 25th July, 2023 filed out of time.
2. The grounds on which the application is based are set out on the face of the application and in the affidavit sworn by the applicant, on 29th April, 2025. The reasons for delay as stated on the face of the application are that the applicant was deceived by his former advocates into believing that the appeal process had been initiated timeously.
3. The applicant avers that he instructed his former advocates to file the appeal. That the said Advocates assured him that they had filed both the notice and letter bespeaking proceedings timeously. However, upon visiting the court registry to inquire about the progress of his file, the applicant discovered that the notice of appeal had been filed on 25th July 2023, well out of time, and that no request for typed proceedings had been made.



4. The applicant contends that he immediately retained his current advocates to undertake the appellate process and they commenced by filing a consent with his previous advocates and requesting for the typed proceedings. In addition, he contends that the appeal is merited and involves land which he has occupied and utilized since 1999.
5. In support of this contention, the applicant has annexed a consent dated 17th February 2025 between his former advocates and his current advocates, Messrs Mukabane and Kagunza Advocates. The applicant further contends that the appeal has merit as it involves land which he has occupied and utilized since 1999.
6. The respondent has filed a comprehensive replying affidavit dated 24th November 2025 opposing this application on several grounds. The respondent submits that the delay of over two years is inordinate and inexcusable, that the applicant had legal representation throughout but failed to ensure compliance with procedural requirements, and that even after allegedly discovering the non-filing of the letter bespeaking proceedings in January 2025, the applicant waited approximately four months before filing the current application.
7. The respondent further contends that he is in occupation of the suit land and would be immensely prejudiced if the application were granted, having relied on the finality of the judgment for a period of nearly two years. The respondent maintains that the applicant has failed to provide sufficient explanation for the entire delay period, particularly the prolonged period during which no letter bespeaking proceedings was filed and the gap between discovery in January 2025 and the filing of this application in April 2025.
8. The discretion of this Court to extend time under Rule 4 is unfettered, but must still be exercised judiciously. The factors that govern the exercise of the discretion to extend time under the said Rule were well stated in the case of *Leo Sila Mutiso vs Rose Hellen Wangare Mwangi*, Civil Application No. Nai 255 of 1997 (UR) as being the length of the delay; the reason for the delay; the chances of the appeal succeeding if the application is granted; and the degree of prejudice to the Respondent if the application is granted. Similar factors were also stated by the Supreme Court of Kenya in *Nicholas Kiptoo Arap Salat vs IEBC* [supra], including whether justice can nevertheless be done.
9. It is not in dispute that the notice of appeal dated 25th July 2023, was lodged approximately 15 days out of time. Upon discovering this in January 2025, the applicant retained his current advocates who filed a consent with the former advocates on 17th February 2025. The letter bespeaking proceedings was filed on 7th April 2025, and the current application was filed on 29th April 2025, some four months after the applicant claims to have discovered the delay.
10. The explanation given by the applicant is that his former advocate deceived him and implied that the notice had been lodged timeously and the appeal process had begun. This was despite the applicant's several visits to the advocates offices to enquire the status of his case. The applicant further alleges that when he discovered this deception in January 2025, he immediately engaged his current advocates. A consent dated 17th February 2025 was subsequently filed, by the two advocates allowing the current advocates, Messrs Mukabane and Kagunza to take over the matter.
11. I have considered the explanation given by the applicant. Turning first to the initial delay in filing the notice of appeal, the judgment was delivered on 26th June 2023, and the notice of appeal was filed on 25th July 2023, making it 15 days out of time. A delay of 15 days is not inordinate in the circumstance, particularly where the applicant attributes this to his advocate's negligence. The more contentious issue concerns what transpired after the applicant discovered the problem in January 2025. According to the applicant's case, after he made the discovery, He retained new advocates who did not have the case



file and all records relating to the case, and therefore had to write to the former advocates to obtain these documents before they could properly assess the matter and file the necessary applications. I find this explanation plausible.

12. I must observe that a delay of four months in filing a relatively straightforward procedural application for extension of time to validate a notice of appeal filed out of time reflects a certain laissez-faire approach on the part of the applicant's current advocates that is unacceptable.
13. In the result, the application is allowed with costs to the respondent. The applicant is directed to file a notice of appeal within the next seven (7) days.

DATED AND DELIVERED AT NAKURU THIS 2ND DAY OF DECEMBER, 2025.

M. WARSAME

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. JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR

