



REPUBLIC OF KENYA



KENYA LAW
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**Oduory aka Dasani v Bonyo (Civil Application E077 of 2025)
[2025] KECA 2057 (KLR) (1 December 2025) (Ruling)**

Neutral citation: [2025] KECA 2057 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT KISUMU
CIVIL APPLICATION E077 OF 2025
LK KIMARU, JA
DECEMBER 1, 2025**

BETWEEN

MICHAEL OCHIENG ODUORY AKA DASANI APPLICANT

AND

WASHINGTON BONYO RESPONDENT

*(Being an application for extension of time to lodge the notice of appeal
out of time from the Judgment of the High Court of Kenya at Siaya
(Kemei, J) Dated 27th March, 2025 in HCCC No. E005 OF 2022)*

RULING

1. The applicant moved this Court by notice of motion, essentially under Rule 4 of the Court of Appeal Rules seeking to be granted extension of time to lodge the notice of appeal out of time. The applicant states that he was aggrieved by the decision of the Superior Court which was rendered on 27th March, 2025. When the applicant sought to lodge the appeal, the court fees was assessed at Kshs.99,200/-. The applicant was unable to immediately raise the said Court fees resulting in delay in lodging the appeal in time. Once the applicant got the funds, he immediately filed the present application seeking extension of time to file the appeal out of time. The application was filed on 3rd July, 2025. According to the applicant, the period of delay was not inordinate. It is excusable. He had given sufficient and reasonable explanation to persuade the Court to exercise its discretion in his favour. The application is supported by the annexed affidavit of the applicant.
2. The application is opposed. The respondent filed a replying affidavit in opposition to the application. The applicant swore that the intended appeal is frivolous as it is intent on frustrating him from enjoying the fruits of the Judgment. He asserted that the reason given for the delay in lodging the appeal was “grossly unmerited, insincere and an afterthought.” The respondent was not persuaded that the applicant lacked financial capacity to lodge the appeal in time. The respondent accused the applicant of lack of diligence in the pursuit of the appeal. The respondent urged the Court to dismiss the application



for lack of merit so that his suffering that has resulted from denial of justice may come to an end. He urged the Court to disallow the application.

3. Both the applicant and the respondent filed written submission in support of their respective opposing position. They both appreciated that in considering this application, the Court is exercising judicial discretion granted by Rule 4 of the Court of Appeal Rules. This discretion, as aptly submitted by the respondent, is guided by the principles enunciated in many decisions including seminal case of Nicholas Kiptoo Korir Arap Salat v. IEBC & others [2014] eKLR. These principles include inter alia, the length of delay; the reason(s) for the delay, the degree of prejudice to the respondent, the conduct of the parties; public interests and the importance of compliance with procedural timelines.
4. In the present application, the applicant has given the reason for the delay in lodging the appeal in time to be on account of the Court fees that he was required to pay before lodging the appeal. It took the applicant two months to secure the funds. Immediately upon securing the same, he filed the present application. This Court is persuaded by the reason given by the applicant for the delay in filing the appeal in time. Financial difficulty in these harsh economic times is not an outlier. The length of delay of about two months is not inordinate in the circumstances of this application. Although the respondent vehemently opposed the application, this Court is convinced that the applicant should be given a chance to ventilate his appeal especially on account of the fact that he will otherwise bear the responsibility of settling the decree of the Superior Court to the sum of Kshs.20 Million. This is not an insubstantial or trifling sum by any standards. The respondent will have to wait for a while to enjoy the fruits of his Judgment if as he asserts the intended appeal will not see the light of the day.
5. The application has merit. It is hereby allowed. The applicant is granted extension of time to lodge the notice of appeal out of time. The said notice shall be filed and served within fourteen (14) days. The record of appeal shall be filed and served within forty-five (45) days of today's date. The respondent shall have the costs of the application.

DATED AND DELIVERED AT KISUMU THIS 1ST DAY OF DECEMBER, 2025.

L. KIMARU

JUDGE OF APPEAL

I certify that this is a true copy of original.

Signed

DEPUTY REGISTRAR.

