

**IN THE COURT OF  
APPEAL AT ELDORET**

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

**E039 OF 2025 BETWEEN**

**BENJAMIN SAMBAI.....APPLICANT**

**AND**

**DAVID KIPTANUI KETER.....RESPONDENT**

*(An application for extension of time within which to file and serve the record of appeal out of time arising from the decision of the Environment and Land Court of Kenya at Eldoret (Obaga, J) delivered on 2<sup>nd</sup> December, 2024*

***in***

***ELC Case No. E008 of 2022 (OS)***

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**R U L I N G**

1. The applicant, Benjamin Sambai has filed a notice of motion dated 28<sup>th</sup> May, 2025 seeking leave to appeal out of time in respect of the judgment delivered on the 2<sup>nd</sup> December, 2024 by the Environment and Land Court.
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. It is averred that the applicant's Advocate requested for typed proceedings timeously on 18<sup>th</sup>

December, 2024. Counsel was

notified on 2<sup>nd</sup> April, 2025 that the proceedings were ready, collected them on the same day and a certificate of delay issued on 4<sup>th</sup> April 2025.

3. The delay as explained was occasioned by the applicant's inability to instruct his advocate to file the record of appeal as he was unwell and immobilised in the months of April and May 2025 by his prolonged battle with diabetes. He provided medical records from Moi Teaching and Referral Hospital showing that he has had a 5-year battle with type 2 diabetes. He maintains that he has an arguable appeal that merits ventilation before this court.
4. The application is unopposed.
5. The grant of orders under **Rule 4** of the Court of Appeal Rules (2010), is unfettered but is nonetheless a judicial one. The relevant factors to be considered in an application for extension of time is the length of delay; the reason for delay; the chances of appeal succeeding and the degree of prejudice (if any) likely to be caused to the respondent if extension is granted. (**See Leo Sila Mutiso vs. Hellen Wangarir Mwangi, Civil Application No. Nai. 255 of 1997**)

6. The import of **Rule 84(1)** of the Rules of this Court is that a record of appeal should be filed within 60 days of the lodging of the notice of appeal. However, where an application for typed proceedings is made within 30 days of the impugned judgment, the time taken to compile the proceedings is exempted in the computation of the 60 days and the deputy registrar of the court below issues a certificate of delay, detailing the period of exemption.
7. The applicant and his advocate have failed to provide the exact date when the notice was filed. However, counsel in the certificate of urgency affirms that it was filed timeously, that is before or by 16<sup>th</sup> December 2024.
8. Taking this into consideration, that the record of appeal ought to have been filed by 1<sup>st</sup> June 2025, it is obvious that by the time the application was filed on 28<sup>th</sup> May 2025, the extension of time sought was unnecessary. The appellant and his advocates clearly erred in the computation of time and the delay in filing the record of appeal is currently about 6 months
9. Nonetheless, given that **Sections 3A** and **3B** of the Appellate Jurisdiction Act enshrines the overriding objective principle, I

find it prudent to consider the delay as it were. The prerequisites for invocation of this principles have now been crystallized by case law. See **City Kariuki Network Limited & Another vs. Daly & Figgis Advocates, Civil Application No. Nai. 293 of 2009** in which the principle was summarized as one donating power to the court to dispense justice with greater latitude.

10. Looking at the draft memorandum of appeal, and noting that the applicant filed the instant application for extension of time out of ignorance or uncertainty about the correct computation of time, I am persuaded that this case merits the exercise of my discretion and direct that the applicant files the record of appeal within 14 days.

11. I make no orders to cost

**Dated and delivered at Nakuru this 2<sup>nd</sup> day of December, 2025.**

**M. WARSAME**

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

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

**Signed\_**

**DEPUTY**

**REGISTRAR**