



**Yator v Kiptoo & another (Civil Application E008 of 2025)
[2025] KECA 2054 (KLR) (2 December 2025) (Ruling)**

Neutral citation: [2025] KECA 2054 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT ELDORET
CIVIL APPLICATION E008 OF 2025
MA WARSAME, JA
DECEMBER 2, 2025**

BETWEEN

CHEBET YATOR APPLICANT

AND

DESPER JOSEPH KIPTOO 1ST RESPONDENT

KIBIWOT KURIASES 2ND RESPONDENT

(An application for extension of time within which to file and serve notice of appeal and 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 the 16th day of December, 2024 in ELC Case No. 98 of 2018)

RULING

1. The applicant has filed the instant application dated 20th January 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 the judgment delivered by the Environment and Land Court (Obaga J.) delivered on 16th December 2024.
2. The principles governing applications for extension of time are well settled. As stated in Abdul Aziz Ngoma v Mungai Mathayo [1976] eKLR, this Court's discretion to extend time under Rule 4 only comes into existence after 'sufficient reason' for extending time has been established, and it is only then that other considerations such as the absence of any prejudice and the prospects or otherwise of success in the appeal can be considered.
3. Briefly, the applicant instituted proceedings in the Environment and Land Court at Eldoret in 1996, claiming ownership of land parcel Lelan/Kabiego/57. The dispute concerned whether the applicant held the land as sole proprietor or in trust for himself and the respondents, who are his brothers and nephews. After protracted litigation spanning nearly three decades, the learned trial judge found



that the applicant held the land in trust for himself and the respondents as sons of the late Cheserek Yator. The court dismissed the applicant's suit and granted the respondents' counterclaim, ordering rectification of the register to reflect equal ownership among the four sons of the late Cheserek Yator, each taking 3.6 hectares.

4. The reasons for delay as stated on the face of the application and in the supporting affidavit is that judgment had been initially scheduled for delivery on 20th June 2024. However, on 19th June 2024, the court issued a notice indicating that the trial judge would not be sitting on 20th June 2024, and that the judgment would be delivered on notice.
5. No further notice was given to the applicant or the parties before the judgment was delivered on 16th December 2024. The judgment was delivered virtually, in the absence of the parties, who had not been notified of the delivery date. By this time, the applicant's advocate's office closed for the festive season on 13th December 2024.
6. The applicant only became aware that judgment had been delivered when he found notification in his office e-filing account on 14th January 2025, upon his office reopening. He immediately informed the applicant, who thereafter gave instructions to take steps to appeal but the time to file and serve notice of appeal had lapsed. The applicant contends that he is desirous to have an opportunity to be heard in challenging the judgment of 16th December 2024, and that he is the rightful and original owner of the suit land, parcel Lelan/Kabiego/57.
7. The impugned judgment was delivered on 16th December 2024.

This application was filed on 22nd January 2025. Under the Court of Appeal Rules, a notice of appeal must be filed within 14 days of the judgment. However, it is a well-established Rule of practice that the period between the 21st day of December in any year and the 13th day of January in the year next following, both days included, shall be excluded from any computation of time for the filing of any pleading or the doing of any other act.

8. Taking the above into consideration, the period from 21st December 2024 to 13th January 2025 (24 days) is excluded. The remaining 10 days of the 14-day statutory period would then run from 14th January 2025, expiring on 23rd January 2025. The present application was filed on 22nd January 2025, which was within time. As it is, however, the applicants are out of time.
9. As was stated in *Fakir Mohamed v Joseph Mugambi & two others*, Civil Application No. Nai. 332/04, the exercise of this Court's discretion under Rule 4 is unfettered, and there is no limit to the number of factors the court would consider so long as they are relevant. The period of delay, the reason for the delay, the chances of the appeal succeeding if the application is granted, the degree of prejudice to the respondent if the application is granted, the effect of the delay on public administration, the importance of compliance with time limits, and the resources of the parties are all relevant factors to be considered.
10. In my view, the applicant filed the instant application for extension of time out of genuine uncertainty about the correct computation of time. The confusion of one day is understandable. Moreover, the applicant's advocate filed this application on 22nd January 2025, immediately upon taking instructions on 15th January 2025. This demonstrates reasonable diligence in the circumstances.
11. The delay arising as a consequence of the applicant's confusion has been sufficiently explained and in the present case, the applicant has not been indolent or negligent. The confusion about the correct deadline, given the festive season exclusion and the judgment having been delivered in the absence of parties, is understandable.



12. In the exercise of my discretion under Rule 4 of the Court of Appeal Rules, and mindful of the overriding objective to facilitate the just, expeditious, proportionate and affordable resolution of disputes, I find that this is an appropriate case for granting an extension of time.
13. Accordingly, the application is hereby allowed. The applicant is granted 14 days from the date of this ruling to file and serve a notice of appeal and record of appeal.
14. I make no orders to cost.

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

M. WARSAME

JUDGE OF APPEAL

