

**IN THE COURT OF
APPEAL AT
NAKURU**

(CORAM: GACHOKA, J.A. - IN CHAMBERS)

**CIVIL APPEAL (APPLICATION) NO. E106 OF
2025**

**BETWEEN
ALEX KIPSANG KIPTOO.....APPLICANT
AND
HELLEN MUET.....RESPONDENT**

(An application for extension of time to file and serve a notice of appeal and record of appeal out of time from the judgment and decree of the Kabarnet Environment and Land Court (L.N.

Waithaka, J.) delivered on 16th September 2025

in

ELC Appeal No. E001 OF 2024)

RULING OF THE COURT

1. In his Notice of Motion dated 21st October 2025, the applicant's application is hinged on the provisions of rules 4, 41 and 42 of the Court of Appeal Rules and order 9 rule 9 of the Civil Procedure Rules. He seeks the leave of this Court to grant Jane Theuri Advocates to act for the applicant in lieu of J. Tembe & Company Advocates. His second prayer is for leave to file and served the notice of appeal and record of appeal out of time to the respondent, against the judgment and decree of *Waithaka, J.* in Kabarnet *ELC Appeal No. E001 of 2024* delivered on 16th

September 2025.

2. At the onset, I wish to point out that the inherent powers and jurisdiction of this Court are strictly limited to those set out in the

Appellate Jurisdiction Act and the Rules thereunder. I note that the first prayer is hinged on the provisions of the Civil Procedure Rules. On account of the fact that this Court does not have unlimited jurisdiction, that prayer will not be considered as it is not provided in this Court's rules.

3. The application is grounded on the reasons set forth in the application and his sworn affidavit dated 14th October 2025 as follows: the applicant is dissatisfied with the findings of the ELC sitting on appeal delivered on 16th September 2025. Aggrieved by that judgment, the applicant sought for typed proceedings in good time. The certified copy of the proceedings were signed on 9th October 2025 and annexed to the application.
4. The applicant urged this Court to allow the application for the following reasons: he had relinquished the services of his erstwhile advocates and did not know how to proceed with his appeal before this Court; the delay occasioned was ordinate and excusable on circumstances beyond his control; his right to appeal should not be curtailed on account of the delay; the respondent would suffer no prejudice if the orders sought are granted; and it was in the interest of justice that the application be allowed.

5. The application remained unopposed. Pursuant to the directions of the Court, the application was heard on the basis of the parties' written submissions. However, as at the time of writing this ruling, I was only impressed with the applicant's written submissions dated 24th November 2025 which urged this Court to allow the application as it was merited.
6. Under Rule 4 of this Court's Rules, the Court may extend time for the doing of an act authorized under the Rules. The constituent elements in succeeding in an application of this nature have been well settled in our jurisdiction. This Court in **Fahir Mohammed vs. Joseph Mugambi & 2 Others** Civil Application NAI 332/04 (ur) summarized the principles as follows:

“The exercise of this Court’s discretion under Rule 4 has followed a well-beaten path since the stricture of “sufficient reason” was removed by amendment in 1985. As it is unfettered, 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, (possibly) 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, the resources of the parties, whether the matter raises issues of public importance - are all relevant but not exhaustive factors: see Mutiso vs

Mwangi, Civil Application No. Nai. 255 of 1997 (ur), Mwangi vs Kenya Airways Ltd [2003] KLR 486.”

7. The applicant has explained that he is aggrieved with the findings of the ELC. He has since obtained the certified copy of the proceedings signed on 9th October 2025. He further explained that he did not know how to proceed absent counsel but confirmed that he was ready with the proceedings. I also note that the impugned judgment was delivered on 16th September and the present application is dated 21st October 2025.
8. Certainly so, the applicant is a vigilant party. He is very much interested in prosecuting his appeal. The delay, though not inordinate, has been sufficiently explained regardless. Accordingly, this application must succeed. I therefore direct the applicant to file and serve his notice of appeal and record of appeal within 30 days from the date of this order. Thereafter, the matter shall be listed before the Deputy Registrar for case management in the usual manner.

Dated and delivered at Nakuru this 15th day of December 2025.

M. GACHOKA C.Arb, FCIArb.

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JUDGE OF APPEAL

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

Signed.

DEPUTY REGISTRAR