

**IN THE COURT OF
APPEAL AT
NAKURU**

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

**CIVIL APPEAL (APPLICATION) NO. E111 OF
2025**

BETWEEN

**ELIZABETH CHEBET LANGAT.....1ST
APPLICANT ERNEST KIPROTICH CHERUIYOT..
.....2ND APPLICANT ERIC LANGAT
CHERUIYOT.....3RD APPLICANT ENOCK
KIPTOO CHERUIYOT.....4TH
APPLICANT**

AND

JOEL KIPNGENO BYOMDO.....RESPONDENT

*(An application for extension of time to file and serve the
record of appeal from the judgment and decree of the
Nakuru Environment and Land Court (M.A. Odeny, J.)
delivered on 22nd January 2025*

in

ELC Case No. 114 of 2018)

RULING

1. The Notice of Motion before me is dated 30th October 2025. It was lodged on 4th November 2025. It is stated to be governed by sections 3A and 3B of the Appellate Jurisdiction Act and rules 4, 42 and 43 of the Court of Appeal Rules. The applicants pray for leave to lodge an appeal out of time from the

judgment and decree of the Nakuru ELC in *Case No. 114 of 2018* delivered on 22nd January 2025. The application is buttressed by the grounds on its

face and the supporting affidavit of Desmond Otieno, the applicants' counsel, sworn on 30th October 2025.

2. The facts giving rise to this application are that the applicants filed suit in Nakuru ELC *Case No. 114 of 2018* that was dismissed by *Odeny, J.* on 22nd January 2025. Dissatisfied, the applicants filed their notice of appeal on 29th January 2025. Thereafter, they lodged a letter to the Deputy Registrar, requesting for a certified copy of the judgment and typed proceedings to prepare the record of appeal. However, the applicants experienced a delay from the court's registry and stated in the certificate of delay issued on 18th September 2025.
3. The applicants computed that while the record of appeal was due for filing within sixty days from 31st July 2025, it was imperative to peruse the typed proceedings and judgement to finalize the preparation of a comprehensive memorandum of appeal which they drafted raising several grounds of appeal. The applicants urged this Court to find that procedural technicalities ought not to drive a litigant away from the seat of justice. Adding that the delay was occasioned by the time taken

to verify the proceedings after they obtained them from the court. They urged that the delay was

not inordinate, since the application was lodged within 30 days after the lapse of the sixty-day window period. They annexed the draft record of appeal and stated that they were ready to file the same as soon as leave is granted. They prayed that their application be allowed.

4. The respondent opposed the application. He filed a replying affidavit sworn on 26th November 2025. He calculated that it took the applicants 48 days from receipt of the certified proceedings to obtain the certificate of delay. Further, the applicants took 90 days to file the application after receipt of the certified proceedings. He deposed that the applicants should not be excused for taking part in a verification process, which procedure is not provided in this Court's rules. Furthermore, no receipts were presented to support their assertion that they had obtained the proceedings.
5. The respondent deposed that the allegations raised in the application were baseless and not backed by any documentary evidence. In his view, the reasons for the delay were not justifiable and the applicants were not deserving of the orders sought. He urged this Court to dismiss the present application

as the

applicants' application for stay was dismissed in Nakuru **Civil Application No. E009 of 2025.**

6. The application was canvassed by way of written submissions. The applicants filed their written submissions and a bundle of authorities, both dated 4th December 2025. They urged the Court to allow the application as prayed. At the time of writing this ruling, the respondent's written submissions had not been filed so I will only rely on the replying affidavit.
7. The discretionary power to file an appeal out of time is set out in Rule 4 of this Court's Rules. The governing principles were set out by this Court in the case of **Wasike vs. Swala [1984] KLR 591** as follows:

***“As Rule 4 now provides that the Court may extend the time or such terms as it thinks just, an applicant must now show, in descending scale of importance, the following factors:
a) That there is merit in his appeal.
b) That the extension of time to institute and/or file the appeal will not cause undue prejudice to the respondent; and
c) That the delay has not been inordinate.”***

8. I have considered the application and the ground enunciated therein. I have also considered the respondent's reply and the applicants' written submissions. The applicants timeously filed

their notice of appeal. They however explained that they were unable to file their record of appeal in good time. They stated that they experienced a delay from the court's registry as explained certificate of delay issued on 18th September 2025.

9. The applicants computed that while the record of appeal was due for filing within sixty days from 31st July 2025, it was imperative to peruse the typed proceedings and judgement to finalize the preparation of a comprehensive memorandum of appeal which they drafted raising several grounds of appeal.
10. Indeed, as rightly stated by the respondent, a verification process by the applicants was not a procedure known in law. Certainly so, the applicants ought to have acted diligently and vigilantly in the filing of their record of appeal. On the flip side, rule 4 of this Court's rules gives a wide latitude to a Court of law in whether to allow or disallow an application for extension of time.
11. In this case, the applicants have explained the delay. Though the explanation is based on a misapprehension of the rules, as no verification process is required, I note that the application was indeed lodged slightly over a month after the lapse of sixty

days from the date they received the proceedings. I will excuse
the delay

and exercise discretion in favour of the applicants. I direct them to file and serve the record of appeal within 14 days from the date of this order. The costs of the application shall abide the outcome of the appeal.

Dated and delivered at Nakuru this 16th day of December 2025.

M. GACHOKA C.Arb, FCIArb.

.....
JUDGE OF APPEAL

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

DEPUTY REGISTRAR

