

**IN THE COURT OF  
APPEAL AT  
ELDORET**

**(CORAM: WARSAME J.A. (IN CHAMBERS))**

**CIVIL APPLICATION NO. E073 OF 2025**

**BETWEEN**

**BIG TREE FARM LIMITED.....APPLICANT**

**AND**

**MARY ANGOLA RONO.....1<sup>ST</sup> RESPONDENT**

**MICHAEL MULONGO.....2<sup>ND</sup>  
RESPONDENT**

**BERNARD NYABERA ONDIMU.....3<sup>RD</sup>  
RESPONDENT**

**ANTHONY DAVID SABWAMI.....4<sup>TH</sup>**

**RESPONDENT MOHAMMED ORINA aka PETER MAYANI  
ORINA.....5<sup>TH</sup> RESPONDENT**

*(An application for extension of time to file a notice of appeal out of time against the judgment of the Environment and Land Court at Kitale (Hon. Dr. Iur F. Nyagaka, Judge) delivered on 23<sup>rd</sup> December 2024*

*in*

***ELC Case No. 104 of 2018)***

**\*\*\*\*\***

**R U L I N G**

1. The applicant has filed the instant application dated 3<sup>rd</sup> November 2025 seeking extension of time to file a notice of appeal and record of appeal out of time against the judgment

of the Environment and Land Court delivered on 23rd  
December 2024 by Nyagaka, J.

2. The genesis of this matter lies in a land dispute concerning LR No. 8986 (IR. 7089/15) situated in Trans Nzoia County. The applicant sued 26 defendants seeking to evict them from the suit property. The respondents filed counterclaims contending that they had bought portions of the land, paid the purchase price, and been given possession. The trial court dismissed the applicant's suit with costs and upheld several counterclaims, finding that the respondents who had paid consideration and taken possession were protected by the equitable doctrines of constructive trust and proprietary estoppel, notwithstanding the absence of Land Control Board consent

3. The impugned judgment was delivered on 23rd December 2024.

The statutory period for filing a notice of appeal expired on 6th January 2025, being 14 days thereafter. No notice of appeal was filed within this period. The present application was filed on 3rd November 2025, approximately ten (10) months and eight (8) days after the delivery of judgment.

4. The reasons for the delay as stated in the supporting affidavit

sworn by Gladys Nakhumicha Wabuge are essentially  
threefold:

first, that the applicant's former advocate on record, one Simiyu Michael Wafula, was struck off from the roll of advocates, which information was not within the knowledge of the applicant; second, that owing to the deponent's age and limited legal understanding and financial constraints, she consulted many advocates in Kitale town but none of them wanted to take up the appeal; and third, that the applicant only became aware of the full legal implications of the judgment upon instructing current counsel on record on 31<sup>st</sup> October 2025.

5. In support of this contention, the applicant has annexed a search result showing that Simiyu Michael Wafula was struck off the roll, and a letter dated 31st October 2025 addressed to the Deputy Registrar of the Environment and Land Court requesting typed proceedings.
6. The respondents have not filed any replying affidavit opposing this application.
7. The principles governing applications for extension of time are well settled. As stated in **Nicholas Kiptoo Arap Korir**

**Salat vs. Independent Electoral and Boundaries  
Commission & 6**

**Others [2014] eKLR**, an application for extension of time is not a right and the burden lies on the applicant to demonstrate sufficient cause. The Supreme Court in that case outlined several principles including that each case must be decided on its own facts, that the applicant must provide a reasonable explanation for the delay, and that the court must assess whether granting the extension would prejudice the other party.

8. As further elaborated in **Fakir Mohamed vs. 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.

9. I have considered the application, the applicant's submissions and the principles governing applications of this nature. While the lapse of almost 10 months is substantial, delay alone does not automatically warrant dismissal where a reasonable explanation is provided. Such delay must be assessed in the context of the circumstances that gave rise to it.
10. On the explanations proffered, the applicant has provided a credible account of the difficulties encountered. The striking off of the former advocate on record, Simiyu Michael Wafula, was a circumstance beyond the applicant's control. The search result annexed demonstrates that this advocate was indeed struck off from the roll. It is reasonable to infer that an advocate who has been struck off would be unable to continue representing a client or to file appeals on their behalf. In addition, communication may have been difficult or impossible. The applicant cannot be faulted for the conduct or unavailability of an advocate who has been struck off from the roll of advocates.
11. In the end the interests of justice favour allowing this matter to be heard on appeal. The draft memorandum of appeal

raises

substantial questions regarding the trial court's application of the doctrines of constructive trust and proprietary estoppel, particularly in the context of land transactions lacking Land Control Board consent. These are important legal questions that merit appellate consideration.

12. The application is allowed with no orders to cost

**Dated and delivered at Eldoret this 22<sup>nd</sup> day of January, 2026.**

**M.WARSAME**

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

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

***Signed***

**DEPUTY REGISTRAR**