



Lagat v Eric Nyaberi, Amos Awendo & Francis Hassan & Nancy Mwangi (Suing in their Capacity as Chairman, Treasurer and Member of Ngei Tenants Welfare Association - Nakuru) & 7 others (Civil Appeal (Application) E097 of 2024) [2026] KECA 3 (KLR) (16 January 2026) (Ruling)

Neutral citation: [2026] KECA 3 (KLR)

REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAKURU
CIVIL APPEAL (APPLICATION) E097 OF 2024
MA WARSAME, JA
JANUARY 16, 2026

BETWEEN

ANDREW LAGAT APPLICANT

AND

ERIC NYABERI, AMOS AWENDO & FRANCIS HASSAN & NANCY MWANGI (SUING IN THEIR CAPACITY AS CHAIRMAN, TREASURER AND MEMBER OF NGEI TENANTS WELFARE ASSOCIATION - NAKURU) 1ST RESPONDENT
FRANCIS HASSAN WANJOHI 2ND RESPONDENT
FLORENCE NZULA MOUNDE 3RD RESPONDENT
BETH WANGARI NJOROGE 4TH RESPONDENT
COUNTY GOVERNMENT OF NAKUR 5TH RESPONDENT
LOCAL AUTHORITIES PENSION TRUST (LAPTRUST) 6TH RESPONDENT
CPF FINANCIAL SERVICES LIMITED 7TH RESPONDENT
LAND REGISTRAR, NAKURU 8TH RESPONDENT

(Being an Application for extension of time to lodge a Notice of Appeal in an intended appeal against the Judgment and Decree of the Environment and Land Court of Kenya at Nakuru (Anthony O. Ombwayo, J.) delivered on 20th September 2024 in ELC Case No. 28 of 2019)

RULING

1. Before me is a Notice of Motion dated 9th October 2024 filed pursuant to Rule 4 of the Court of Appeal Rules, 2022. The Applicant seeks inter alia, “..That leave do issue for the Applicant to file and



serve a Notice of Appeal out of time against the judgment delivered in Nakuru ELC Case No. 28 of 2019 on 20th September 2024.”

2. The applicant herein was an Interested Party in Nakuru ELC Case No. 28 of 2019, a suit instituted by the 1st to 4th respondents (the plaintiffs in that suit) against the County Government of Nakuru, Local Authorities Pension Trust (LAPTRUST), CPF Financial Services Limited, and the Land Registrar, Nakuru as Defendants. The suit concerned ownership and rights over parcels of land known as Nakuru Municipality Block 4/224 and related subdivisions in Ngei Estate, Nakuru.
3. The Honourable Justice Anthony O. Ombwayo delivered judgment in the matter on 20th September 2024, dismissing the suit, with no orders as to costs. The applicant is aggrieved by the said judgment and wishes to appeal to this Honourable Court.
4. The Court of Appeal Rules, 2022, require that a Notice of Appeal be lodged within fourteen (14) days of the date when the decision being appealed against was made or delivered. In the present case, judgment was delivered on 20th September 2024, meaning that the deadline for filing the Notice of Appeal was 4th October 2024. The applicant did not file a Notice of Appeal within this period, hence the present application for extension of time.
5. The applicant’s case, as deposed in the Supporting Affidavit of George Ogembo, is that judgment was scheduled for delivery on 20th September 2024, as indicated in the Cause List published by the Court; the Cause List indicated that the matter would be heard at 9:00 AM and provided a virtual court link: <https://shorturl.at/adDl6>.
6. Given this information, the applicant’s counsel expected that the judgment would be read in open court through the virtual platform, as is customary; however, contrary to this expectation, the Honourable Judge neither joined the virtual session nor read the judgment in open court. Instead, the judgment was posted on the Judiciary e-filing portal on 20th September 2024 and no notice was given to the applicant or his counsel informing them that the mode of delivery had changed from the anticipated virtual court session to electronic posting on the portal. Counsel only became aware that judgment had been delivered when he made inquiries at the Nakuru ELC Registry on 7th October 2024 but by this time, the fourteen-day window for filing a Notice of Appeal had already expired on 4th October 2024.
7. Counsel deposes that upon receiving the judgment on 7th October 2024, he immediately forwarded it to the applicant, who gave instructions to appeal and that the present application was prepared and filed promptly on 11th October 2024, being just four days after discovering the judgment. He deposes that the appeal is arguable and that the delay in filing the Notice of Appeal is neither inordinate nor attributable to any fault of the applicant, but was wholly caused by lack of communication regarding the mode of delivery of the judgment.
8. In opposition to the application, the 6th and 7th respondents have filed a Replying Affidavit dated 6th November 2025.
9. They assert that the applicant and his advocates were aware that judgment was scheduled for delivery on 20th September 2024, and that the same was uploaded on the e-filing platform on that date. They contend that in this era of e-filing, court systems send parties automated notifications via email or SMS notifying them of upcoming court dates and directions, and that all parties must have received such notifications when the judgment was delivered. Moreover, they aver that on 2nd October 2024, their advocates forwarded the draft decree to the applicant’s advocates, along with other advocates in the suit. They maintain that it is disingenuous for the applicant to claim that his advocates only became aware of the judgment on 7th October 2024, particularly when no evidence has been provided to support the



assertion that advocates made inquiries at the ELC registry, and when no efforts were made to follow up on the status of the judgment from 20th September to 7th October 2024.

10. Lastly, they point out that despite filing the application on 11th October 2024, the Applicant only served it on 23rd October 2025, which was highly prejudicial as the 6th and 7th respondents were under the impression that no party was intending to appeal and that the litigation had come to an end.
11. The principles governing applications for extension of time to file a Notice of Appeal have been well articulated in numerous decisions of this Court and the Supreme Court. In *Nicholas Kiptoo Korir Salat v Independent Electoral and Boundaries Commission & 6 Others*, [2014] eKLR, the Supreme Court stated:

“The factors to be taken into account include: the length of the delay; the reasons for the delay; the chances of the appeal succeeding if the application is granted; and the degree of prejudice to the respondent if the application is granted.”
12. In *Trans Africa Insurance Company Limited v Benson Waireri & Another* [2015] eKLR, this Court held:

“Extension of time is not granted as a matter of course. An applicant must demonstrate sufficient cause. The onus is on the applicant to explain the delay and to show that if granted the extension, he has an arguable case with reasonable prospects of success.”
13. In my view the delay in filing the application is minimal. The statutory deadline for filing the Notice of Appeal was 4th October 2024. This application was filed on 11th October 2024, being only seven (7) days after the deadline expired. With regards to the explanation for the delay,
14. As for the explanation for delay, I find it plausible that the provision of a virtual link in the Cause List with a time slotted for delivery of judgment created a reasonable expectation of virtual delivery of judgment. As for the allegation that the applicant’s counsel was in receipt of the draft decree on 2nd October 2024 when there was still time to file the Notice of Appeal, I must observe that while the evidence shows that an email was sent to counsel on 2nd October 2024, there is no evidence of actual receipt of that email. There is no delivery confirmation, no read receipt, and no acknowledgment from the Applicant’s counsel. The Applicant has not filed any further affidavit either admitting or denying receipt of this email. In the absence of proof of actual receipt, I cannot safely conclude that the applicant’s counsel had notice of the judgment on 2nd October 2024 by virtue of this email.
15. In the end I find that the explanation for the delay is reasonable and merited and that the intended appeal raises issues that are arguable and affect the applicant’s claimed rights to immovable property. In addition, the prejudice suffered by the 6th and 7th Respondents resulting from the delayed service of this application, while real, can to some extent be addressed through costs which I award to the 6th and 7th respondents.
16. The application is allowed. The applicant shall file and serve the said Notice of Appeal within seven (7) days from the date of this ruling.

DATED AND DELIVERED AT NAKURU THIS 16TH DAY OF JANUARY, 2026.

M. WARSAME

.....

JUDGE OF APPEAL



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

Signed

DEPUTY REGISTRAR

