

**IN THE COURT OF APPEAL
AT NAIROBI**

(CORAM: TUIYOTT, JA (IN CHAMBERS))

CIVIL APPLICATION NO. NAI E310 OF 2025

BETWEEN

RICHARD ONDIEK AYUSA.....APPLICANT

AND

JOHN MWANGI MACHARIA1ST

RESPONDENT NAIROBI CITY COUNTY.....2ND

RESPONDENT

(Being an application for extension of time and leave to file an appeal out of time from the judgment of the Environment and Land Court of Kenya at

Nairobi

(Oguttu Mboya, J.) dated 22nd February 2024

in

ELC Case No. 882 of 2015)

RULING

- [1] Leave is sought by the applicant to appeal out of time against the judgment delivered by **Hon. Oguttu Mboya** on 22nd February 2024. The plea is in a notice of motion dated 16th May 2025.
- [2] In an affidavit sworn on 16th May 2025, **Richard Ondiek Ayusa**, the applicant, explains the circumstances in failing to file the appeal on time.
- [3] The notice of appeal was timeously filed but the record of appeal was inadvertently filed in the High Court instead of the Court of

appeal on 26th June 2024. A receipt for payment of fees is attached to the

affidavit. The mistake is blamed on counsel and the request is that the mistake should not be visited upon the applicant.

[4] The motion is not opposed and the explanation given by the applicant is not controverted. I have no reason to disbelieve it.

[5] The delay is not overly inordinate and the explanation given is plausible. As the respondents do not oppose the application, then grant of the order cannot be said to prejudice them. In exercise of the discretion granted to the Court, exercisable within the parameters restated time without number by this Court (see for example **Fakir Mohamed v Joseph Mugambi & 2 others**

[2005]

KECA 340 (KLR)), I allow the notice of motion dated 16th May 2025.

[6] The record of appeal shall be filed and served within **thirty (30)** days hereof. No order as to costs.

Dated and delivered at Nairobi this 30th day of January 2026.

F. TUIYOTT

.....
JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR.