



**David & another v Kibe (Civil Application E121 of 2025)  
[2026] KECA 69 (KLR) (30 January 2026) (Ruling)**

Neutral citation: [2026] KECA 69 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NYERI  
CIVIL APPLICATION E121 OF 2025  
M NGUGI, JA  
JANUARY 30, 2026**

**BETWEEN**

**JACKAN WAMABIU DAVID ..... 1<sup>ST</sup> APPLICANT**

**RHODA WAMUTIRA MUGO ..... 2<sup>ND</sup> APPLICANT**

**AND**

**JORAM MACHARIA KIBE ..... RESPONDENT**

*(Being an application for leave to file the Record of Appeal out  
of time from the judgment of the Environment and Land Court  
(Mutungi J.) dated 22nd February 2024 in ELCA NO. E005 OF 2023)*

**RULING**

1. In the application dated 5<sup>th</sup> August 2025, the applicants, Jackan Wamabiu David and Rhoda Wamutira Mugo seek extension of time to file their record of appeal from the judgment of the Environment and Land Court (ELC) in Kerugoya (Mutungi J.) dated 24<sup>th</sup> February 2024. The application is expressed to be brought under section 3A of the [Civil Procedure Act](#), Cap 21 of the Laws of Kenya and any other enabling provisions of law. The applicable provision on applications for extension of time to file an appeal before this Court is rule 4 of the Court of Appeal Rules, 2022.
2. The appeal before the ELC emanated from a judgment of the Chief Magistrate's Court in Wang'uru in MELC No. 9 of 2018. Briefly, the facts before the trial court were that the 1<sup>st</sup> applicant had agreed to sell to the 2<sup>nd</sup> applicant and the respondent a portion of his entitlement as a beneficiary to land parcel number Kabare/Nyangati/2052. The agreement with the respondent had been entered into in 2013, while the agreement with the 2<sup>nd</sup> respondent had been entered into in 2017.
3. It turned out, however, after the succession proceedings relating to one Jackan Wamahiu Njogu that the 1<sup>st</sup> applicant was only entitled to a half acre of the property, which he transferred to the respondent



as title number Kabare/Nyangati/8201. The applicants filed suit in the Chief Magistrate's Court alleging fraud against the respondent in getting the 1<sup>st</sup> applicant to transfer the entire ½ acre to him.

4. In its decision, the Chief Magistrate's Court determined that the land, registered in the name of the respondent, should be subdivided into two parcels of a ¼ acre each, with the parcels to be registered in the names of the 2<sup>nd</sup> applicant and the respondent respectively. This is the decision that was reversed by the ELC in the judgment dated 22<sup>nd</sup> February 2024, leading to the present application.
5. The application is supported by an affidavit sworn jointly by the applicants on 5<sup>th</sup> August 2025. It is their averment that after judgment in favour of the respondent was delivered on 22<sup>nd</sup> February, 2024, they filed a Notice of Appeal intimating their intention to lodge an appeal.
6. They later discovered, however, that their advocate had not filed their record of appeal, by which point time to file it had lapsed. They aver that failure to file the record of appeal within the prescribed time was not their fault; that they have an overwhelming chance of winning the appeal; and that it is meet and just that their application be allowed.
7. The respondent opposes the application by an affidavit he swore on 9<sup>th</sup> September 2024. He confirms that judgment in the matter was delivered on 22<sup>nd</sup> February, 2024, and his advocates were served with the Notice of Appeal dated 7<sup>th</sup> March, 2024 on 22<sup>nd</sup> March, 2024; that the applicants have not demonstrated whether they obtained the certificate of delay showing the time taken to prepare and supply certified copies of proceedings; have not demonstrated whether they applied and paid for typed proceedings; and the reasons that they have advanced for the delay in filing the record of appeal and this application are not sufficient as there has been inordinate delay.
8. He further avers that the Notice of Appeal was filed on 8<sup>th</sup> March 2024 but served on 22<sup>nd</sup> March 2024, fifteen days later; that the applicants have failed to give plausible explanation for the delay; have not demonstrated when they instructed their advocates to pursue the appeal on their behalf or when they discovered that the appeal had not been filed; and that blaming their advocates is not sufficient reason for granting leave.
9. The respondent filed submissions dated 3<sup>rd</sup> September, 2025 in which he essentially reiterates his averments in the affidavit in opposition to the application. He submits that the explanation given for not filing the appeal from 22<sup>nd</sup> March 2024 till August, 2025, a period of over one and a half years, is not satisfactory. He prays that the application be dismissed with costs to him.
10. There were no submissions by the applicants on record
11. I have considered the application, the affidavit in support and opposition thereto, as well as the respondent's submissions.

Rule 4 of this Court's Rules grants the Court the discretion to extend time for the doing of any act under the Rules. The discretion is wide, but it must be exercised judiciously. In exercising its discretion, the Court should bear in mind certain factors: the period of the delay; the reason for the delay; (possibly) the chances of the appeal succeeding; and the degree of prejudice to the respondent if the application is granted- see *Leo Sila Mutiso v Rose Hellen Wangari Mwangi* [1999] 2 EA 2316.

12. The judgment of the ELC that the applicants seek to appeal against was delivered on 22<sup>nd</sup> February, 2024, and the applicants lodged a notice of appeal dated 7<sup>th</sup> March 2024 on 8<sup>th</sup> March 2024. They served it on the respondent on 22<sup>nd</sup> March 2024. The applicants did not file the record of appeal within



60 days as prescribed under rule 84(1) of this Court's Rules, meaning they should have filed the record by 8<sup>th</sup> May 2024, unless the proviso to rule 84(1) was applicable to them. Rule 84(1) states that:

Subject to rule 118, an appeal shall be instituted by lodging in the appropriate registry, within sixty days after the date when the notice of appeal was lodged—

- a. a memorandum of appeal, in four copies;
- b. the record of appeal, in four copies;
- c. the prescribed fee; and
- d. security for the costs of the appeal:

Provided that where an application for a copy of the proceedings in the superior court has been made in accordance with sub-rule (2) within thirty days after the date of the decision against which it is desired to appeal, there shall, in computing the time within which the appeal is to be instituted, be excluded such time as may be certified by the registrar of the superior court as having been required for the preparation and delivery to the appellant of such copy.

(2) An appellant shall not be entitled to rely on the proviso to sub-rule (1) unless the appellant's application for such copy was in writing and a copy of the application was served upon the respondent.

13. The applicants attribute the delay in filing their record of appeal to a failure on the part of their advocates to file the record of appeal. They have not, however, indicated when they discovered that their advocates had not filed the record. They filed the present application in August of 2025, more than one year after they filed their notice of appeal. They have not placed a letter bespeaking proceedings to indicate that they applied for the proceedings and judgment; nor have they indicated that they have obtained a certificate of delay.
14. The delay in this matter is inordinate, and it has not been sufficiently explained. Further, the applicants have not placed before the Court a draft memorandum of appeal on the basis of which this Court can consider the other factor on an application under rule 4, whether their appeal has any chance of succeeding. This is more so in view of the fact that the intended appeal in this case would be a second appeal, where only matters of law can be raised before this Court.
15. Accordingly, I find that the application dated 5<sup>th</sup> August 2025 is without merit. It is hereby dismissed with costs to the respondent.

**DATED AND DELIVERED AT NYERI THIS 30<sup>TH</sup> DAY OF JANUARY 2026.**

**MUMBI NGUGI**

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**JUDGE OF APPEAL**

I certify that this is

a true copy of the original.

Signed

**DEPUTY REGISTRAR**

