



**Mulama & 3 others v Viragi (Civil Application E152 of 2025)
[2026] KECA 53 (KLR) (29 January 2026) (Ruling)**

Neutral citation: [2026] KECA 53 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT KISUMU
CIVIL APPLICATION E152 OF 2025
LK KIMARU, JA
JANUARY 29, 2026**

BETWEEN

**AGNETA GAZEMBA MULAMA 1ST APPLICANT
RE. PHARAS NYABERA ZAVANI 2ND APPLICANT
SIMON MUSYOKI MBINDYO 3RD APPLICANT
GOSPEL CENTRE-MBALE 4TH APPLICANT**

AND

STEPHEN SALAMBA VIRAGI RESPONDENT

(Being an application for extension of time to file and serve the record of appeal out of time from the Judgment of the Environment and Land Court of Kenya at Kakamega (D. Obungo, J) dated 22nd October, 2024 in ELC No. 22 of 2020)

RULING

1. The applicants moved this Court by notice of motion essentially under Rule 4 of the Court of Appeal Rules seeking to be granted extension of time to file and serve the record of appeal out of time. The applicants states that they were aggrieved by the Judgment delivered on 22nd October, 2024 by the Environment and Land Court (ELC) Kakamega. Upon delivery of the said Judgment, they duly lodged and served the notice of appeal on 22nd October, 2024. The same was served upon the respondent. They made a formal request to be supplied with typed copies of proceeding and Judgment. The applicants states that they were not supplied with the certified typed copies of the proceedings until October, 2025. It was this delay that necessitated the applicants to file the present application for extension of time. The applicants pleaded with the Court to exercise its discretion in their favour and allow the application. The application is supported by the annexed affidavit of Rev. Pharas Nyabera Zavani, the 2nd Applicant.



2. The application is opposed. Stephen Salamba Viragi, the respondent swore a replying affidavit in opposition to the application. He deponed that the applicant went to sleep after obtaining orders staying the execution of the Judgment and decree of the trial Court pending the hearing of the appeal. He pointed out that there was no evidence that the letter bespeaking of certified copies of the proceedings was sent to Court was served upon the respondent. The respondent took issue with the length of delay and the reasons given by the applicant for delay in lodging the record of appeal in time. The respondent was not convinced that the reasons given were tenable or excusable. He urged the Court not to come to the aid of the applicant by granting the application because, in his view, the applicant did not establish a

“prima facie” case to entitle him to the orders craved for. He urged the Court to dismiss the application with costs.

3. This Court has considered the application, the replying affidavit, the applicants’ written submission and the authorities relied thereon. Rule 4 of the Court of Appeal Rules grants this Court unfettered discretion to grant or not grant an application seeking extension of time. However, this discretion must be exercised in obedience to the laid down principles which includes: the reason of delay, the length of delay, whether the respondent will be prejudiced if the Court were to grant the application and whether the intended appeal will likely to succeed. The Court must also take into account the interests of justice (See Samuel Onango Ogolla v. BOG ST. Francis of Assisi Nyanga Secondary School [2025] KECA (eKLR)).

4. In the present application, the applicants states that they were prevented from lodging the appeal in time due to the delay in obtaining the certified typed copies of the proceedings and Judgment. As correctly noted by the respondent, there was no evidence that the applicants served or copied the letter to the Court bespeaking of proceedings to the respondent. If they had done so, they would have benefited from the proviso of Rule 84(1) of the Court of Appeal Rules which excludes the time that it requires to procure the typed and certified copies of the proceedings and judgment from the trial Court when computing time. This oversight by the applicants is what compelled them to file the present application. This Court is satisfied by the reason given by the applicants for the delay in filing the record of appeal in time. It was for reasons beyond their control. They immediately moved this Court when they obtained the certified copies of the proceedings and Judgment from the trial Court. The dispute relates to land which should ideally be litigated to its conclusion. Any prejudice on the part of the respondent shall be compensated by an award of damages.

5. The application has merit and is hereby allowed. The applicants are hereby granted leave to file and serve the record of appeal out of time. They shall do so within twenty-one (21) days of today’s date. The respondent shall have the costs of the application.

DATED AND DELIVERED AT KISUMU THIS 29TH DAY OF JANUARY, 2026.

L. KIMARU

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JUDGE OF APPEAL

I certify that this is a true copy of original.

Signed

DEPUTY REGISTRAR.

