

**IN THE COURT OF
APPEAL AT
KISUMU**

**(CORAM: KIMARU, JA (IN
CHAMBERS) CIVIL APPLICATION NO.
E130 OF 2025 BETWEEN**

DICK OMONDI OKUKU.....APPLICANT

AND

WILLIAM ODONGO OYIEYO.....RESPONDENT

(Being an application for extension of time to file the notice of appeal out of time from the Judgment of the Environment and Land Court of Kenya at Kisumu (Okongo, J) dated 23rd January, 2025

in

ELCLA No. E027 OF 2023)

RULING

1. **Dick Omondi Okuku**, the applicant herein was aggrieved by the Judgment which was rendered by the Environment and Land Court in Kisumu **ELCLA No. E027 of 2023** which was delivered on 23rd January, 2025. The applicant wishes to appeal against the said decision to this Court. He has moved this Court by notice of motion substantially under **Rule 4** of the **Court of Appeal Rules** seeking to be granted leave to appeal out of time. The applicant gave the reason for delay in lodging the notice of appeal in time: He has been of ill

health

and was currently in the United States of America; He relied on his relatives to inform him of the progress of his case; Contrary to his expectations, the relatives failed to communicate with his erstwhile advocate resulting in him not being made aware of the delivery of the Judgment; His effort to directly communicate with his former advocate proved difficult on account of the fact that they had relocated offices. The applicant pleaded with the Court to exercise its discretion in his favour to enable him exercise his right of appeal to this Court. The application is supported by the annexed affidavit of the applicant.

2. The respondent did not file a replying affidavit in opposition to the application. However, he filed written submission in which he opposed the application by stating that the applicant had failed to meet the legal threshold that will enable this Court to exercise discretion in his favour. In particular, the respondent submitted that the applicant had not satisfactorily explained the reasons for delay. He was of the view that the explanation given was inexcusable. The respondent pointed out that the period of delay was

inordinate. He submitted that if the Court were to allow the application, it would prejudice him as he

would be prevented from enjoying the fruits of the Judgment. He urged the Court to disallow the application with costs.

3. This Court has carefully considered the facts of this application. **Rule 4** of the **Court of Appeal Rules** grants this Court unfettered discretion to determine whether or not to extend time for any steps to be done outside the period provided by the Rules. This discretion is however guided by principles to be considered which include, the reasons for the delay, the length of delay, whether the respondent will be prejudiced and whether the intended appeal will likely succeed. (See **Leo Sila Munyao v. Hellen Wangari Mwangi [1999] 2EA 231**).

4. In the present application, the applicant gave the reasons for the delay to be his illness at the time the Judgment was delivered and secondly, the fact that he resides in the United States of America and relied on his relatives to follow up the progress of the case with his former advocate. Although the respondent was not impressed by these reasons and vehemently opposed the application, this Court

formed the view that the reasons given are excusable. The delay of a period of **seven (7) months** is not inordinate in the circumstances of this

application. The subject appeal being a land dispute, it would serve the interest of justice for the parties to be allowed to ventilate the issues in dispute in a final appeal. The respondent will not be prejudiced by such final adjudication of the dispute.

5. In the premises therefore, the application has merit and is hereby allowed. The applicant is granted extension of time to lodge the notice of appeal out of time. The said notice of appeal shall be filed and served within **fourteen (14) days** of today's date. The record of appeal shall be filed and within **forty five (45) days** of today's date. The respondent shall have the costs of the application.

Dated and delivered at Kisumu this 30th 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.