



Omollo (Suing as the administrator ad litem of the Estate of John Omolo Anditi - Deceased) v Asembo (Sued as the administrator of the Estate of Lazaro Odera Jura - Deceased) & 6 others (Civil Application E102 of 2025) [2026] KECA 24 (KLR) (22 January 2026) (Ruling)

Neutral citation: [2026] KECA 24 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT KISUMU
CIVIL APPLICATION E102 OF 2025
LK KIMARU, JA
JANUARY 22, 2026**

BETWEEN

MARGARET AUMA OMOLLO (SUING AS THE ADMINISTRATOR AD LITEM OF THE ESTATE OF JOHN OMOLO ANDITI - DECEASED) APPLICANT

AND

SELLAH AKECH ASEMBO (SUED AS THE ADMINISTRATOR OF THE ESTATE OF LAZARO ODERA JURA - DECEASED) 1ST RESPONDENT

DEPUTY COMMISSIONER MBITA SUB-COUNTY 2ND RESPONDENT

THE CABINET SECRETARY LAND, SETTLEMENT & PHYSICAL PLANNING 3RD RESPONDENT

THE DIRECTOR LAND ADJUDICATION & SETTLEMENT . 4TH RESPONDENT

HOMA BAY COUNTY 5TH RESPONDENT

THE PRINCIPAL MAGISTRATE'S COURT-MBITA 6TH RESPONDENT

THE HONOURABLE ATTORNEY GENERAL 7TH RESPONDENT

(Being an application for extension of time to file the notice of appeal out of time from the Ruling of the Environment and Land Court of Kenya at Homa Bay (Dr. Iur Nyagaka, J) dated 11th June, 2025 in ELC Petition No. E007 of 2024)

RULING

1. The Ruling of the Superior Court that is the subject of this application was delivered on 11th June, 2025. According to the applicant, she did not have sight of the actual Ruling until 1st July, 2025 when the said Ruling was uploaded on the Court Case Tracking System (CTS). The applicant lodged the



notice of appeal on 7th July, 2025. She has filed this application seeking to have the late filing of the notice of appeal validated and excused. In the affidavit in support of the application, her advocate Douglas Otieno deponed that the applicant was desirous of pursuing the appeal and urged the Court to allow the application since the delay was not inordinate.

2. The application was opposed. Sellah Akech Asembo, the 1st respondent, swore a replying affidavit in opposition to the application. She was not persuaded by the reasons given by the applicant for her failure to lodge the notice of appeal in time. She accuses the applicant of indolence and lack of diligence in the pursuit of the appeal. She urged the Court to disallow the application.
3. Under Rule 4 of the *Court of Appeal Rules*, this Court has unfettered discretion to grant or not grant an application for extension of time. However, this discretion is exercised judiciously and guided by principles settled in a longline of decisions of this Court. For instance, in *Leo Sila Mutiso v Hellen Wangari Mwangi* [1999] 2EA231, the Court held thus:

“It is now well settled that the decision whether or not to extend the time for appealing is essentially discretionary. It is also well settled that in general the matters that this Court takes into consideration in deciding whether to grant an extension of time are: first, the length of the delay, secondly, the reason for the delay, thirdly, (possibly) the chances of the appeal succeeding if the application is granted; and fourthly, the degree of prejudice to the respondent if the application is granted.”

4. In the present application, the applicant has explained the reason of delay to be lack of sight of the actual Ruling delivered by the Superior Court that delayed her decision whether or not to pursue an appeal. Although the 1st respondent is not convinced by the reasons advanced by the applicant, this Court agrees with the applicant that the reason given is excusable. This Court takes notice of the fact that the dispute between the parties involves land. In such cases, unless otherwise proved, an intended appellant should not be locked out from exercising their constitutional right of appeal to enable the issues in dispute to be resolved with finality. The delay of a period of 25 days is not inordinate in the circumstances of this application. The 1st respondent shall be compensated by an award of costs.
5. In the premises therefore, the application is allowed. The applicant is granted leave to lodge the notice of appeal out of time. The same shall be filed and served within fourteen (14) days of today’s date. The record of appeal shall be filed and served within forty five (45) days of service of the notice of appeal. The 1st respondent shall have the costs of the application.

DATED AND DELIVERED AT KISUMU THIS 22ND 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.

