



**Otsieno v Otsieno (Civil Application E112 of 2025)  
[2026] KECA 26 (KLR) (22 January 2026) (Ruling)**

Neutral citation: [2026] KECA 26 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT KISUMU  
CIVIL APPLICATION E112 OF 2025  
LK KIMARU, JA  
JANUARY 22, 2026**

**BETWEEN**

**LAWRENCE ODUYA OTSIENO ..... APPLICANT**

**AND**

**STEVEN OLANDO OTSIENO ..... RESPONDENT**

*(Being an application for extension of time to lodge the notice of appeal and the record of Appeal out of time from the Judgment of the Judgment of the Environment and Land Court of Kenya at Busia (Olaog, J) dated 22nd November, 2024 in ELC Case No. E012 of 2020)*

**RULING**

1. The applicant was aggrieved by the Judgment rendered in Busia ELC case No. E012 of 2020 (2020) on 22<sup>nd</sup> November, 2024. The applicant wishes to appeal against the said decision to this Court. He filed the present application on 21<sup>st</sup> July, 2025 seeking to be granted leave to lodge the notice of appeal and the record of appeal out of time. The applicant explained the reason for delay was due to the death of one of the parties in the suit before the Superior Court. The period it took for the family of the deceased party to consult and decide on the way forward is what led to delay in lodging the notice of appeal in time. The dispute involves ancestral land owned by the two families. The applicant urged the Court to allow the application so that he may be able exercise his right of appeal and in the interest of justice. The application is supported by the annexed affidavit of the applicant.
2. The application is opposed. The respondent swore a replying affidavit in opposition to the application. In it, he deponed that since the delivery of the Judgment on 22<sup>nd</sup> November, 2024, the applicant had taken no steps to prosecute the appeal. He was not convinced by the reason given by the applicant for the delay in lodging the appeal in time. He pointed out that the deceased that is referred to in the applicant’s application died on 8<sup>th</sup> May, 2024 long before the Superior Court rendered its Judgment. In his view, that cannot be a valid reason why the appeal was not filed in time. The respondent urged



that the period of delay was unexplained and inordinate that the applicant was not deserving of the exercise of judicial discretion by this Court.

3. This Court has considered the application, the replying affidavit and the written submissions filed by both the applicant and the respondent. Both parties appreciate that under Rule 4 of the Court of Appeal Rules, this Court is exercising judicial discretion and deciding whether or not to grant the application for extension of time to lodge the appeal out of time. In exercise of its discretion the Court is guided by the following, inter alia, principles; the reason for delay; the length of delay; the degree of prejudice to the respondent and the public importance of the matter. (See *Karny Zahviya & Another v. Shalom Levi* [2018] KECA 300 KLR).
4. In the present application, the applicant explained the reason for delay. The applicant stated that he was prevented from lodging the appeal in time on account of consultation that took place among family members following the death of one of the parties in the suit before the trial court. From his affidavit, the consultation took place for a period of approximately six (6) months before a decision was made to proceed with the appeal. The dispute relates to ancestral land of two families. Although the respondent was not convinced by the reason advanced by the applicant for the delay, this Court formed the view that the applicant gave a satisfactory explanation for the delay. When a death within the family comes into play, especially in the african setting, sometimes decisions are not made as quickly as can be expected taking into account the african culture that honours the period of mourning and celebration of the deceased's life. The delay of a period of six (6) months is not inordinate in the circumstances of this application.
5. The application has merit. It is hereby allowed. The applicant is granted leave to file and serve the notice of appeal within fourteen (14) days of today's date. The record of appeal shall be filed within forty-five (45) days of the date of service of the notice of appeal. There shall be no orders as to costs.

**DATED AND DELIVERED AT KISUMU THIS 22<sup>ND</sup> DAY OF JANUARY, 2025.**

**L. KIMARU**

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**JUDGE OF APPEAL**

I certify that this is a true copy of original.

Signed

**DEPUTY REGISTRAR.**

