

**IN THE COURT OF
APPEAL AT NAIROBI**
**(CORAM: MURUNGI B. KAIRARIA, J.A. (IN
CHAMBERS)) CIVIL APPLICATION NO. E725 OF
2025**

BETWEEN

PETER KIRURI KINYURI.....1ST

APPLICANT JANE NJOKI KINYURU

***(Suing as legal representative of the estate of the
late***

GEOFFREY KINYURU NJENGA.....2ND APPLICANT

AND

KAJIADO COUNTY LANDS SURVEYOR....RESPONDENT

*(An application for leave to appeal out of time from
the judgment of the Environment and Land Court at
Kajiado (L. Komingoi, J.) dated 10th July 2025*

in

ELC Case No. E028 of 2023

RULING

1. This ruling is on the notice of motion application dated 1st December, 2025 for leave to file appeal out of time from the judgment and decree [Komingoi J] dated 10th July, 2025 in Kajiado ELC NO. E028 OF 2023 dismissing the applicants' suit with no orders as to costs.

2. The applicants [Peter Kiruri Kinyuru and and Jane Njoki Kinyuru are the administrators of the Estate of the late Geoffrey Kinyuru Njenga. They were the plaintiffs in the

dismissed suit where they had among other things sought

an order to permanently close the public access road on land parcel number Ngong/Ngong/11488 and 11489, contending that the road had been illegally opened.

3. Aggrieved by the decision to dismiss the suit the applicants filed a notice of appeal on 17th July 2025 and requested for typed proceedings vide a letter of even date which was within the time allowed by rule 77 and 84 of the Court of Appeal Rules 2022 but did not lodge the appeal within the timelines set by the Rules that is within sixty [60] days from the date of filing the notice of appeal.
4. In the supporting affidavit they explain that the failure to file the appeal within the period prescribed by the rules is not intentional and attribute it to delay by the trial Court Registry in supplying them with the typed proceedings.
5. I have considered the grounds of the application for extension of time to file the appeal together with the averments in the supporting affidavit as well as the written submissions dated 2nd February, 2026.
6. The respondent has not filed any response in opposition to the application.

7. The sole issue that falls for determination is whether the applicant has on the basis of the material presented before me proved worthy of exercise of discretion under Rule 4 of the Court of Appeal Rules to grant the extension of time to file the appeal out of time against the decision of the Environment and Land court made on 10th July 2025.
8. It is settled that the grant of extension of time to do anything authorised or required by the Rules is not a right but a discretionary remedy to be granted to an applicant only upon providing a plausible and satisfactory explanation for the delay. [See **Salat vs. Independent Electoral and Boundaries Commission & 7 Others** [2014] KESC 12 KLR, **Leo Sila Mutiso vs. Hellen Wangari Mwangi** C.A NO. 255 OF 1997, **Fakir Mohammed vs. Joseph Mugambi & Others** [2005] eKLR, and **Andrew Kiplagat Chemaringo vs. Paul Kipkorir Kibet** [2018]eKLR.] A plausible and satisfactory explanation for the delay has been aptly described as “the key that unlocks the court’s flow of discretionary favor.”
9. The applicants have stated that they promptly lodged a

notice of appeal on 17th July, 2025 and
requested for typed

proceedings but the time prescribed for filing the appeal lapsed as they waited for the typed proceedings to be supplied. The sixty days period lapsed on 23rd September, 2025 and the typed proceedings were not availed to them on 20th November, 2025. They filed the instant application for extension of time on 10TH December, 2025.

10. I am satisfied that the reason proffered by the applicants for the delay is both plausible and satisfactory. Accordingly, the application for extension of time dated 10th December, 2025 is merited and is hereby allowed. The applicants are granted 30 Days to file and serve their appeal.

Dated and delivered at Nairobi this 13th day of March, 2026.

MURUNGI B. KAIRARIA

.....
JUDGE OF APPEAL

*I certify that this is
a true copy of the
original.*

Signed.

DEPUTY REGISTRAR