

**IN THE COURT OF
APPEAL AT
KISUMU**

**(CORAM: KIMARU, JA (IN
CHAMBERS) CIVIL APPLICATION NO.
E017 OF 2026 BETWEEN**

**JAMES LESHAN KORIO.....1ST APPLICANT
JOAB LEPOSE.....2ND**

APPLICANT AND

MOSES L. KORINKO.....1ST RESPONDENT

**MUJAID KUROMONGI.....2ND
RESPONDENT**

**SIMEON TIEPOON.....3RD
RESPONDENT**

**DAVID OLE NTUKAI.....4TH
RESPONDENT LANDS ADJUDICATION & SETTLEMENT
OFFICER TRANSMARA SUB- COUNTIES.....5TH**

**RESPONDENT LANDS REGISTRAR,
TRANSMARA SUB-COUNTIES.....6TH
RESPONDENT**

**HON. ATTORNEY GENERAL.....7TH
RESPONDENT**

(Being an application for extension of time to file and serve the record of appeal out of time from the Ruling and Order of the Environment and Land Court of Kenya at Kilgoris (M. Mwanyale, J) dated 29th September, 2025

in

ELC Case No. E005 of 2024)

RULING

1. The applicants were aggrieved by the Ruling of the

Environment and Land Court (ELC) which was delivered on 29th September, 2025. They filed the notice of appeal on 30th September, 2025.

They have moved this Court substantially pursuant to **Rule 4** of the **Court of Appeal Rules** seeking to be granted leave to file and serve the record of appeal out of time. The applicants state that the reason the record of appeal was not filed in time was due to negligence on the part of their previous advocates on record who failed to follow through with their instructions to file and serve the said record of appeal.

2. The applicants deponed that their erstwhile advocates gave them misleading information and took them on a run-around until they realize that the time by which the record of appeal was required to have been filed and served had elapsed without the requisite steps being taken. The applicants plead with the Court to give them a chance to ventilate their appeal before this Court, because, in their view, the intended appeal raises substantial point of law that deserve this Court's consideration. They point out that the respondents will not suffer any prejudice if the application is allowed. The application is supported by the grounds on the face of the application and the annexed affidavit of **James Leshan Korio**, the 1st applicant.

3. The application is opposed. The 1st to 4th respondents oppose the application. **Moses Lemashon Korinko**, the 1st respondent swore a replying affidavit in opposition to the application. They swore that the applicants had not placed convincing and persuasive reasons for delay in filing and serving the record of appeal in time. They averred that the reasons given by the applicants were neither inadvertent or excusable. They deponed that the applicants cannot, in law, divorce themselves from the action or inaction of their advocate. They swore that the applicants had not established, to the satisfaction of the Court, that there was breakdown in the advocate-client relationship with their advocate to convince this Court to exercise its discretion in their favour. The 1st to 4th respondents insist that the intended appeal does not raise any arguable issues that would persuade this Court to grant the application craved for by the applicants. They urged the Court to dismiss the application with costs.

4. The applicants and the 1st to 4th respondents file written submission in support of their respective opposing positions. The other respondents did not file any response to the

application They did not file written submission in support or in opposition to the application though served by the Court.

5. Both parties appreciate that in determining this application under **Rule 4** of the **Court of Appeal Rules**, this Court is exercising unfettered judicial discretion which is only circumscribed by principles, which this Court has formulated over time to guide it when considering such applications. In **Leo Sila Munyao v. Rose Hellen Wangari Mwangi** **[1998] EA231**,

this Court held thus:

“... it is now settled that a decision whether or not to extend the time for appealing is essentially discretionary. It is also well settled that in general the matters which this Court takes into account 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...”

6. In the present application, the applicants blame their former advocates for the delay in filing the record of appeal in time. The applicants state that despite giving appropriate instructions to their erstwhile advocate, he did not follow

through with their instructions due to sheer negligence. In
essence, the applicants

are saying that this Court find the reason for the delay that they have advanced excusable. The 1st to 4th respondents are not convinced by the reasons given by the applicants for their failure to file the record of appeal in time. They asserted that the intended appeal had no chance of success. They pointed out that they would be prejudiced if the applicants are granted extension of time that they have craved for.

7. This Court's evaluation of the facts of this application leads to the conclusion that the applicants should be allowed to exercise their right of appeal to this Court. The subject matter of the dispute is land. In most cases, it is appropriate for parties to ventilate their dispute involving land until they have exhausted their right of appeal. Secondly, the applicants cannot be blamed for the tardiness of their former advocates. They have given an explanation that is excusable. The length of delay is a couple of months. It was not inordinate. The respondents will not be prejudiced in the circumstances.

8. In the premises therefore, the application has merit and is hereby allowed. The applicants are granted leave to file and

serve the record of appeal out of time. The said record of appeal

shall be filed and served within **twenty one (21) days** of today's date. The respondents will be paid the costs of this application.

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

L. KIMARU

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JUDGE OF APPEAL

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

**Signed
DEPUTY REGISTRAR.**

