

**IN THE COURT OF APPEAL  
AT KISUMU**

**(CORAM: ASIKE-MAKHANDIA, J.A. (IN CHAMBERS))**

**CIVIL APPLICATION NO. E011 OF 2026**

**BETWEEN**

**IGNATIUS CHOGE MWANGI.....APPLICANT**

**AND**

**ADASON OLE MINIS .....1<sup>ST</sup>  
RESPONDENT OLENANYOKIE LEMAYIAN ONYOKIE .....  
2<sup>ND</sup> RESPONDENT SHIROI KIMOKOTHO NASH  
.....3<sup>RD</sup> RESPONDENT  
MPOKE MATASI .....4<sup>TH</sup>  
RESPONDENT SAMSON MPATIAN RINKA .....  
.....5<sup>TH</sup> RESPONDENT  
AHMED SALIM .....6<sup>TH</sup>  
RESPONDENT COUNTY GOVERNMENT OF NAROK .....  
7<sup>TH</sup> RESPONDENT  
(As interested Respondent)**

*(Being an application for extension of time to file an appeal out of time)*

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**RULING**

[1] This application seeks this Court’s leave for the applicant to file memorandum of appeal as well as record of appeal, all out of time. It is premised on **Article 159(2) (d)** of the Constitution of Kenya, **Sections 3A** and **3B** of the Appellate Jurisdiction Act, **Rules 4, 42, 43** and **77(1)** of the Court of Appeal Rules, **Sections 3A** and **3B** of the Civil Procedure Act and all other enabling provisions of the law.

**[2]**The applicant concedes that there was a delay of about **thirty (30)**

days in doing all the forgoing acts but hastens to add that the delay

was neither intentional or contemnetious. He blames it on his previous advocates. That on his instructions, his previous advocates filed Notice of Appeal on 5<sup>th</sup> December, 2021 within the statutory period in terms of **Rule 61** of the Court of Appeal Rules from the Judgment and decree of the Environment and Land Court at Kilgoris delivered on 25<sup>th</sup> November, 2025. However, thereafter, the said advocates became un- cooperative and failed to file the appeal or even sent out a letter bespeaking proceedings.

[3] It was then that the applicant took the matter into his own hands and proceeded to request for the proceedings. According to the applicant, as soon as he became aware of the lapse on the part of his then advocates, he took immediate remedial measures by filing the instant application in person. It is his view that the delay was neither wilful nor inordinate, and arose from factors beyond his control. He has annexed a draft memorandum of appeal to the application which according to him discloses a strong appeal. He also asserts that granting extension of time will not prejudice the respondent in any way as he has not initiated the execution process. That he has found himself in this conundrum through sins of his then advocates which should not be visited upon him. He therefore prayed for the application to be allowed.

[4] The application was duly served on the respondents' counsel, **Messrs Pion Netaya & Co. Advocates** and **Kiprotich Robert & Co. Advocates** respectively, if the affidavit of the Process-saver, one **William Morara Ogwara** dated 22<sup>nd</sup> January, 2026, on record is anything to go by. However, the respondents have not filed any papers in opposition to the application. Similarly, all the parties were directed by the Deputy Registrar of this Court to file and exchange written submissions in support of or in opposition to the application. However, only the applicant complied. So, as it is, the application is unopposed.

[5] The primary issue for determination in this application is whether the mistake or inaction of the advocate could be a good reason for this Court to exercise its unlimited discretion to extend time in favour of the applicant.

[6] There is undisputed evidence on record that the applicant timeously instructed his previous advocates to lodge an appeal immediately the judgment was delivered as evidenced by the notice of appeal that was lodged within time. Thereafter the applicant followed up the matter repeatedly. However, it appears that the applicant was let down by his then advocates who failed to act on his instructions to process the appeal.

[7] In the case of **Murai v Wainaina [1978] KECA 26 (KLR)** while reiterating that sins of the advocate should not be visited on a diligent client, the court held:

**“Where a litigant has done all that is required of them, they should not be deprived of their right to be heard due to the counsel’s failure...”**

[8] Similarly, in **Towett v Kibaru & Anor. [2025] KECA 1650 (KLR)**, this Court held that:

**“In such circumstances, it would be manifestly unjust to penalise the applicant for errors and delays caused by his Advocate...”**

I am satisfied that the sequence of events demonstrate that the applicant was not sleeping on his right to pursue the intended appeal.

[9] I have looked at the draft memorandum of appeal and I am satisfied that it is not frivolous as it raises fundamental questions regarding ownership of all that piece or parcel of land known as **Transmara/Ololchani/237** and the place of final decisions over the same made in previous proceedings.

[10] In the absence of any opposition to the application by the respondents, I am unable to tell whether they will suffer any prejudice. On the other hand, it appears to me that the applicant may suffer immense loss as there is a looming threat of eviction.

[11] In conclusion, I am satisfied that the applicant has satisfied me

regarding the delay, reasons for the delay, prospects of the success  
of

the intended appeal and decree of prejudice, if any, to himself. See Leo

**Sila Munyao v Rose Hellen Wangari Mwangi [1999] 2 EA**

**231.** I would accordingly, allow the application.

[12] The applicant has **thirty (30)** days within which to file memorandum as well as record of appeal from the date hereof. Costs shall be in the intended appeal.

**Dated and delivered at Kisumu this 10<sup>th</sup> day of March, 2026.**

**ASIKE-MAKHANDIA**

.....  
**JUDGE OF APPEAL**

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

**Signed**  
**DEPUTY REGISTRAR**