

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT
KAKAMEGA

ELC MISCELLENOUS APPLICATION NO. E084 OF 2025

SAMSON ATENG OYOO.....
APPLICANT

VERSUS

PETERLICE ODUOR SIJENYI.....1ST
RESPONDENT

COUNTY LAND REGISTRAR KAKAMEGA.....2ND
RESPONDENT

HON. ATTORNEY GENERAL.....3RD
RESPONDENT

RULING

Introduction

1. Vide a Notice of Motion dated 1st December 2025, the applicant sought the following orders;

a) Spent

b) That the applicant be and is hereby granted leave to file and serve his record of appeal and memorandum of appeal out of time

c) That costs of this application abide in the cause

2. The application is supported by the affidavit of the applicant dated 1st December 2025. It was the applicant's case that he was aggrieved with the ruling of Honourable Mathenge Stella Wanjiru and intends to appeal against the same. That his advocate got ill when he got an accident and broke his hip joint, took a couple of days and lost contact with his client and only came to know of the outcome of the case much later. That on 25th September 2025 when the matter came up for ruling, his advocates assistant logged to court and informed court that the applicant was quite unwell, but that the court turned him down. That the delay is inordinate
3. The application is opposed. The Respondent filed a replying affidavit sworn on 27th December 2025. He stated that the allegations by the applicant are false because the advocate filed submissions on the Preliminary objection on 2nd September 2025 and served the same on the same day, hence he was aware of the ruling. That Mr. Ojwang Agina advocate appeared in court on the date of delivery of the ruling at 11 am and the ruling was read out

to him hence allegations that he was not in attendance and was in hospital are not true.

4. That the proceedings of 25th September 2025 do not show the clerk of the applicant's advocate addressing the court. That that happened before the ruling on 28th August 2025. That Mr. Ojwang never mentioned to court on 25th September 2025 that he had been admitted in hospital. That the instant application was filed after two months and one week which is an inordinate delay. That no reason has been given for the delay

Analysis and determination

5. The court has carefully considered the application and response thereto. The only issue that arise for the court's determination is whether the applicant has demonstrated good and sufficient cause to justify extension of time.
6. Section 79G of the Civil procedure Act provide for time within which to file appeal as follows;

“Every appeal from a subordinate court to the High court shall be filed within a period of thirty days from the date of the decree or order appealed against,

excluding from such period any time which the lower court may certify as having been requisite for the preparation and delivery to the Appellant of a copy of the decree or order;

Provided that an appeal may be admitted out of time if the Appellant satisfies the court that he had good and sufficient cause for not filing the appeal in time.”

7. It is therefore clear that an appeal against a decision of the subordinate court to this court ought to be filed within 30 days of delivery of the decision sought to be appealed against. However, where there is a good and sufficient cause for delay, the court has discretion to grant leave for a party to file appeal out of time.

8. In the case of **Nicholas Kiptoo Arap Korir Salat v Independent Electoral and Boundaries Commission & 7 Others [2014] e KLR**, the Supreme court had the following to say on extension of time for filing an appeal;

(1) “Extension of time is not a right of a party. It is an equitable remedy that is only available to a deserving party at the discretion of the court.

(2) A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the court

- (3) Whether the court should exercise the discretion to extend time, is a consideration to be made on a case to case basis.**
- (4) Whether there is reasonable reason for the delay, the delay should be explained to the satisfaction of the court.**
- (5) Whether there will be any prejudice suffered by the Respondents if the extension is granted.**
- (6) Whether the application has been brought without undue delay; and**
- (7) Whether in certain cases, like election petitions, public interest should be a consideration for extending time.”**

9. Therefore, to obtain leave to appeal out of time the applicant is obligated to explain the reason for delay to the satisfaction of the court, as the discretion to extend time ought to be exercised judiciously. In the instant case, the applicant alleged that his advocate was absent on the date of the ruling and had been admitted in hospital after being involved in a road accident, and only came to be aware of the ruling much later.

10. I have considered the proceedings availed by the respondent and the same shows that Mr. Agina appeared in court on 25th

September 2025 at 11 am and the ruling was read out to him. Therefore, allegations that he was absent on that date and only became aware of the ruling much later are incorrect. That being the position, and as the applicant has predicated his application on falsehoods, I find no merit in the application dated 1st December 2025 which I dismiss. In view of the current state of counsel for the applicant, I make no order as to costs.

11. It is so ordered

**DATED, SIGNED AND DELIVERED AT KAKAMEGA IN
OPEN COURT/VIRTUALLY THIS 11TH DAY OF MARCH
2026 THROUGH MICROSOFT TEAMS VIDEO
CONFERENCING PLATFORM**

A. NYUKURI

JUDGE

In the presence of:

Mr. Agina for the applicant

Mr. Mshindi for the respondent

Court Assistant: Delphine