



**Registered Trustees Kisii Sports Club v Registered Trustees (Evangelical Lutheran Church of Kenya) (Civil Application E123 of 2025) [2026] KECA 679 (KLR) (27 March 2026) (Ruling)**

Neutral citation: [2026] KECA 679 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT KISUMU  
CIVIL APPLICATION E123 OF 2025  
HA OMONDI, JA  
MARCH 27, 2026**

**BETWEEN**

**REGISTERED TRUSTEES KISII SPORTS CLUB ..... APPLICANT**

**AND**

**THE REGISTERED TRUSTEES (EVANGELICAL LUTHERAN CHURCH OF KENYA) ..... RESPONDENT**

*(Being an application for extension of time to file and serve the Notice of appeal out of time in an intended appeal from a ruling of the Environment and Land Court at Homabay (Nyagaka, J.) dated 14th July 2025 in Case No.1 of 2023)*

**RULING**

1. The applicant has moved this Honourable Court under Rule 4 of the Court of Appeal Rules seeking leave to file and serve a Notice of Appeal out of time against the ruling delivered on 14<sup>th</sup> July 2025 in Homa Bay ELC Civil Case No. 1 of 2023 (Nyagaka,J); and orders for stay of proceedings pending the hearing and determination of the intended appeal. The ruling sought to be appealed against was delivered on 14<sup>th</sup> July 2025. The applicant claims to have promptly moved to prepare the instant application after overcoming internal bureaucratic requirements within its organization. The delay is thus not inordinate.
2. Opposing the application through the replying affidavit dated sworn by Samson Maoto, the application is described as being incompetent and an abuse of this court process as the applicant since the applicant could have filed this application in the trial at Homa Bay for extension of time for filing Notice of intention to appeal from its judgment and/or ruling; that the Notice of appeal has not been annexed and/or attached to the applicant's affidavit and this shows that the applicant is not ready for an appeal, but only intent on delaying the matter further.



3. The respondent laments that the applicant has been making applications to delay the execution of the decree and prevent the respondent from enjoying the fruits of the judgment, taking into account that the impugned decision was delivered on 14<sup>th</sup> July 2025 and there was nothing that prevented the applicant from filing the Notice of Appeal if he was serious, especially since the applicant was present when the ruling was delivered and there is no explanation given for the delay.
4. The respondent submits that this application has been overtaken by events as it commenced execution proceedings against the applicant by filing an application for eviction, because upon delivery of the ruling its advocate proceeded to Homa Bay and took a date for the hearing of the application dated 29<sup>th</sup> March 2023 for eviction; that it was upon service of the said application that the applicant herein proceeded to file the instant application for stay of proceedings and extension of time to lodge the notice of appeal, action which is perceived as an afterthought intended to delay this matter.
5. So what was the reason for the delay? According to the applicant, the delay was occasioned by the need to consult all its trustees making the decision to appeal; and that this bureaucratic process took time but was neither deliberate nor meant to obstruct justice; that once the consultations were concluded, Counsel was promptly instructed to prepare this application.
6. The applicant believes the chances of appeal succeeding are very good, saying it an arguable appeal which raises weighty issues touching on ownership, possession, and eviction in respect of Kisii municipality block 11/132. It is submitted that an arguable appeal need not necessarily succeed; and it is sufficient that it raises at least one bona fide issue deserving the Court's consideration. In support of this proposition, reference is made to the case of Stanley Kangethe Kinyanjui vs. Tony Ketter & 5 Others [2013] eKLR and Muchugi Kiragu vs. James Muchugi Kiragu & Another Civil Application No. NAI. 356 of 1996.
7. The applicant also argues that the respondent stands to suffer no prejudice that cannot be compensated by costs; yet on the contrary, denying the applicant leave to appeal would lock them out of the appellate process and deny them their constitutional right to access justice under Article 48 and fair hearing under Article 50 of *the Constitution*.
8. The respondent in urging for the dismissal of the application submits that no reasonable excuse has been advanced for failing to file the notice of appeal in time; that claim about consultation with other members of applicants has not been supported by any evidence in form of minutes to prove that there was a meeting.
9. The respondent argues that the applicant cannot keep the court guessing whether there is an arguable appeal or not without annexing the grounds of the intended appeal together with the Notice of appeal. It is further pointed out that the applicant has not even sought for typed copies of the proceedings from the time the ruling was made, and that this is an indicator that the applicant is not serious with the alleged intended appeal.
10. I have considered the application, the grounds in support thereof, submissions filed, authorities cited and the law. The ruling which the applicant intends to appeal against was delivered on 14<sup>th</sup> July 2025. The application was filed on 12<sup>th</sup> August 2025 a period of almost 30 days from the date of ruling. The Notice of appeal could have been filed within 7 days from the date of delivery of the ruling to the superior court.
11. The issue for determination is whether the application is deserving of the orders sought. Under Rule 77 of the Court of Appeal Rules an intended appellant is required to lodge the Notice of Appeal, before or within fourteen (14) days of the decision, then within 7 days of lodging the notice of appeal, serve



copies thereof on all persons directly affected by the appeal- this did not happen. The discretion that I am called to exercise in the determination of this application is unfettered and is provided under Rule 4 of the Court of Appeal Rules which provides as follows:

The court may, on such terms as it thinks just, by order extend the time limited by these Rules, or by any decision of the Court or of a superior court, for the doing of any act authorized or required by these Rules, whether before or after the doing of the act, and a reference in these Rules to any such time shall be construed as a reference to that time as extended.

12. Clearly, Rule 4 does not provide for factors the court ought to consider in an application for extension of time but courts have devised appropriate principles to be applied in achieving a ‘just’ decision in the circumstances of each case. For instance, in *Leo Sila Mutiso v Hellen Wangari Mwangi* [1999] 2 EA 231 parameters set out included the length of the delay, the reason for the delay; (possibly) the chances of the appeal succeeding if the application is granted; and the degree of prejudice to the respondent if the application is granted.
13. There is no maximum or minimum period of delay set out under the law, but the reason or reasons for the delay must be reasonable and plausible. For instance, in *Andrew Kiplagat Chemarigo vs. Paul Kipkorir Kibet* [2018] eKLR, this Court stated:

“The law does not set out any minimum or maximum period of delay. All it states is that any delay should be satisfactorily explained. A plausible and satisfactory explanation for delay is the key that unlocks the court’s flow of discretionary favour. There has to be valid and clear reasons, upon which discretion can be favourably exercisable.”
14. Undoubtedly the notice of appeal should be lodged within 14 days of the delivery of the decision which it seeks to appeal against and served within 7(seven) days after lodging, that did not happen, not because counsel or the applicant was unaware of the outcome, rather, there was some consultation to be done. It is not clear what difficulty there was in effecting this consultation timeously, indeed the applicant is very economical with the information on this. Is it that the trustees were in different locations of the globe and were required to congregate physically? Was there any difficulty in leveraging on the use of technology and perhaps have a virtual meeting? The consultation spawned, leaves more questions than answers; and does not constitute a satisfactory explanation. The court is censured from acting whimsically.
15. The applicant has also not addressed the position stated that the whole process has been overtaken by events since execution has taken place. If that position is correct, then it would only make it more difficult to persuade this court to exercise its discretion favourably to the applicant. And even if it is not correct, then the perception created is that the applicant merely wishes to delay matters upon realizing that execution is imminent. Whichever angle one addresses the application from, it does not merit exercise of a favourable discretion. The upshot is that the application lacks merit, and is dismissed with costs to the respondent.

**DATED AND DELIVERED AT KISUMU THIS 27<sup>TH</sup> DAY OF MARCH, 2026.**

**H. A. OMONDI**

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**JUDGE OF APPEAL**

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



Signed

**DEPUTY REGISTRAR**

