

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT**  
**KITALE**  
**ELC MISC. NO. E003 OF 2026**

**WILLIAM SITIENEI**-----**KIPLAGAT APPLICANT**

**VERSUS**

**DENNIS MOSES KIAGO**-----  
**RESPONDENT**

**RULING**

1. The court is asked through an application dated **30/1/2026** to enlarge the time to appeal against a judgment of the lower court delivered on **2/11/2025**. The reasons for the delay are contained in the affidavit of William Kiplagat Sitienei, sworn on **30/1/2026**.
2. It is deponed that following the closure of evidence, parties were directed to file written submissions and come for judgment on **18/11/2025**. The applicant deposes that on **25/11/2025**, the judgment was not ready, and they were told to come on **2/12/2025**, on which date there was no communication on the way forward until **16/12/2025**, when the judgment was uploaded to the case tracking system, showing

that it was actually delivered on **2/12/2025** without notice.

- 3.** The applicant deposes that his advocate on record was not notified of the changes to the judgment delivery date, which judgment, as per annexure marked **WKS-(3)**, was availed to him after the period of appeal had elapsed.
- 4.** The applicant deposes that he has an arguable appeal as per the annexed draft marked **WKS-(4)**.
- 5.** The application is opposed through a replying affidavit sworn by Nyakundi G. Stephen, Advocate, on **11/2/2026**. He denies that the judgment was delivered on **2/11/2025** as alleged or at all, since the date fell on a Sunday. The deponent deposes that although he did not personally attend the judgment delivery on **2/12/2025**, as earlier communicated to the parties, he went to the registry on **3/12/2025** and collected a copy of the judgment, noting the clerical error of the date.
- 6.** The deponent states that the applicant's lawyer was aware of the delivery date but waited until the judgment was uploaded on the system on **16/12/2025**. The deponent states that, having had knowledge of the said judgment on **16/12/2025**, the applicant delayed for **45 days** to file this application, while giving no good reason for the

same. The deponent terms the wait deliberate. The deponent states that the clerical error would have been corrected had the applicant moved the trial court under **Section 99** of the Civil Procedure Act.

- 7.** The applicant relied on oral and written submissions made on **17/2/2026** and dated **14/2/2026**, respectively. It was submitted by Miss Munialo Advocate that a delay of **2 months** is not inordinate since a plausible explanation has been offered. Reliance is placed on **Simon -vs- Oira (Civil Appeal 215 of 2024) [2025] KEHC 7211.**
- 8.** Learned counsel, Mr. Nyakundi, submitted that the date appearing for delivery of the judgment as **2/11/2025** is a clerical error curable under **Section 99** of the Civil Procedure Act. Learned counsel submitted that the intended appeal is an exercise in futility as the plaintiff/applicant was found to have had no land to tell.
- 9.** In a rejoinder, Miss. Munialo for the applicant submitted that the intended appeal raises arguable grounds as to whether the trial magistrate contradicted himself on the issue of both the land and the capacity to sell the same.
- 10.** To extend or not extend time to file an appeal is a discretionary power of the court exercisable on sound grounds and principles of law. In **Mohamed -**

**vs- Judicial Service Commission Civil Appeal No. E187 of 2025 [2026] KECA 443 [KLR] (6<sup>th</sup> March 2026) (Ruling)**, the court held that a party seeking indulgence of the court must place before the court sufficient material explaining the delay to enable the court to exercise its discretion judiciously.

**11.** In **Otieno -vs- Ngari Civil Appeal No. E008 of 2025 [2026] KESE 6 [KLR] (23<sup>rd</sup> January 2026) (Ruling)**, the court cited **Salat -vs- Independent Electoral and Boundaries Commission & Others [2014] KESC 12 [KLR]**, on the principles that:

- (a)** *Extension of time is not a right of a party but is only available to a deserving one.*
- (b)** *The applicant has the burden of laying a basis to the satisfaction of the court.*
- (c)** *Consideration is on a case-by-case basis.*
- (d)** *The delay should be explained to the satisfaction of the court.*
- (e)** *Prejudice against the opposite party is a consideration.*
- (f)** *The application should not be brought after undue delay.*
- (g)** *Public interest is a consideration.*

**12.** Judgments are considered officially delivered on the date they are signed and pronounced either in open court or electronically. Both parties herein are

unable to agree on when the judgment was actually delivered.

- 13. Section 79** of the Civil Procedure Act requires an appeal to be filed within **30 days** from the date of the judgment. Time as held in **Salat vs Independent Electoral and Boundaries Commission** (*supra*), is a crucial component in the dispensation of justice. Extension of time is a creature of equity. One can only enjoy it if one acts equitably. He who seeks equity must do equity.
- 14.** The date in the judgment is **2/11/2025**. The lower court record or file is not before me to ascertain the exact date of the delivery of the judgment. It is not disputed that the judgment was uploaded on **16/12/2025**. Either way, the court, as held in **Paul Wanjohi Mathenge -vs- Duncan Gichane Mathenge [2013] eKLR** and **Leo Sila Mutiso -vs- Rose Hellen Wangari Mwangi (Civil Application No. Nai 255 of 1997)**, has to consider *inter alia* the prejudice to the respondent if the application is granted, public interest, reason for the delay, and the chances of the appeal succeeding.
- 15.** The respondent has not expressed any prejudice if the application is allowed. It is not indicated if there is any execution or dissipation of the subject matter in the appeal. In view of the confusion on the date

of delivery of the judgment and the non-appearance of the parties during the delivery, I shall give the applicant the benefit of the doubt.

**16.** The application is allowed. The Memorandum of Appeal to be filed and served within **14** days from the date hereof. There will be no order as to costs. File closed.

**17.** Orders accordingly.

**Ruling dated, signed, and delivered** via **Microsoft Teams/Open Court** at **Kitale** on this **22<sup>nd</sup>** day of **April 2026**.

**In the presence of:**

Court Assistant - Dennis

Wanyonyi for Munialo for the applicant present

Nyakundi for the respondent absent



**HON. C.K. NZILI  
JUDGE, ELC KITALE.**