



REPUBLIC OF KENYA



**Tonkei v Kasha (Civil Application E002 of 2026)  
[2026] KECA 700 (KLR) (25 March 2026) (Ruling)**

Neutral citation: [2026] KECA 700 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAIROBI  
CIVIL APPLICATION E002 OF 2026**

**P LILAN, JA**

**MARCH 25, 2026**

**BETWEEN**

**OLOIBOR OLE TONKEI ..... APPLICANT**

**AND**

**NTIPAPA OLE KASHA ..... RESPONDENT**

*(Being an application for extension of time to file and serve the Memorandum and Record of Appeal from the Judgment and Decree of the Environment and Land Court at Kajiado (Komingoi, J.) delivered on 28th September 2023 in ELC Case No. 44 of 2020 (O.S))*

**RULING**

1. The application dated 29<sup>th</sup> December 2025 is seeking extension of time pursuant to rule 4 of the Rules of this Court for the applicant to lodge the memorandum and record of appeal against the judgment and decree of the Environment and Land Court at Kajiado delivered on 28<sup>th</sup> September 2023.
2. In support of the application, the applicant and his advocate, Daniel Mukei, state that, immediately following delivery of the impugned judgment, the applicant signified his intention to appeal by filing a notice of appeal on 3<sup>rd</sup> October 2023 and by simultaneously applying for certified copies of the proceedings and judgment thereby demonstrating diligence and a clear intention to comply with the Rules of the Court.
3. However, and shortly after delivery of the judgment, the applicant fell ill and suffered episodes of memory loss and cognitive difficulty which materially impaired his ability to manage his affairs, thus compromising his ability to communicate effectively with his advocate and hence could not issue the further instructions necessary for the preparation and filing of the memorandum and record of appeal. As a result of this condition, he lost contact with his advocate during the material period, a circumstance he states was neither deliberate nor contumacious but arose from factors beyond his control with the consequence that the statutory period for filing the record of appeal lapsed. Upon



regaining stability and realizing that time had expired, the applicant states that he moved this Court without undue delay.

4. He further contends that the delay is excusable when viewed in the context of his medical condition and the steps already taken to preserve the right of appeal. In addition, he avers that the intended appeal is arguable and raises substantial questions of law and that the respondent will suffer no undue prejudice if time is extended as any inconvenience arising from the late filing of the appeal can adequately be compensated by an award of costs. Lastly, the applicant asserts that unless the orders sought are granted, he risks permanent loss of his registered parcel of land without the benefit of appellate review.
5. The respondent has not filed any response in opposition to the application.
6. Having considered the affidavits and submissions filed by the applicant, I now turn to the parameters applicable in the exercise of discretion under rule 4 of the Rules of this Court. In *Leo Sila Mutiso vs Rose Hellen Wangari Mwangi*, Civil Application No. 251 of 1997, this Court stated:

“It is now well settled that the decision whether or not to extend the time for appealing is essentially discretionary. It is also well stated 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.”

7. On the first principle, namely the length of the delay, the judgment sought to be appealed against was delivered on 28<sup>th</sup> September 2023. The notice of appeal was filed on 3<sup>rd</sup> October 2023, whereas the present application for extension of time was not filed until 29<sup>th</sup> December 2025. The period between 3<sup>rd</sup> October 2023 and 29<sup>th</sup> December 2025 is approximately eight hundred and eighteen (818) days. Under rule 84 of this Court’s Rules, an appeal ought to be instituted within sixty days from the date of filing the notice of appeal. In the circumstances, the delay is for the lengthy period of 818 days.  
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8. The explanation offered for that delay is that shortly after delivery of the impugned judgment, the applicant got sick and suffered episodes of memory loss and cognitive difficulty which impaired his ability to manage his affairs and maintain communication with his advocate. In support of that contention, the applicant has placed before this Court a letter from the Kajiado County Referral Hospital dated 29<sup>th</sup> December 2025 stating that the applicant suffers from senile dementia, major depressive disorder and post-traumatic stress disorder and that in the opinion of the attending doctor, he is unable to make most concrete decisions owing to his mental condition. When viewed in that context, the delay is attributed to the applicant’s mental impairment and the resulting breakdown in communication with counsel after the notice of appeal had already been filed on 3<sup>rd</sup> October 2023. Although the delay is substantial, the medical evidence, lends some plausibility to the explanation that the applicant’s condition materially affected his ability to take the necessary steps to prosecute the appeal.
9. Turning to the intended appeal, it is not the role of a single judge at this stage to make definitive pronouncements on the prospects of success or otherwise of the intended appeal. Suffice it to observe that the dispute between the parties concerns a parcel of land registered in the applicant’s name and which the trial court found that the respondent had acquired title thereto by adverse possession. The applicant seeks to challenge that determination. From the draft memorandum of appeal annexed to the application, the intended appeal raises arguable points of law and cannot be said to be frivolous.



10. On the question of prejudice, the respondent has not opposed the application and has not placed before this Court any material to demonstrate that he will suffer prejudice if the extension sought is granted. In the circumstances, there is nothing to suggest that the respondent's position will be irreparably compromised by allowing the applicant to file the intended appeal out of time. In any case, any inconvenience occasioned by the delay can adequately be compensated by an award of costs. On the other hand, refusal to extend time would effectively shut out the applicant from pursuing an appellate challenge to a decision that has the effect of divesting him of land registered in his name. In the absence of demonstrated prejudice to the respondent and bearing in mind the nature of the dispute and the consequences of denying the applicant an opportunity to ventilate his grievance on appeal, the balance on this question of prejudice tilts in favour of allowing the matter to be determined on its merits before this Court.
11. Consequently, I allow this application and order that the record of appeal be filed and served within thirty (30) days from the date of delivery of this ruling. The costs of this application shall abide the outcome of the appeal.

**DATED AND DELIVERED AT NAIROBI THIS 25<sup>TH</sup> DAY OF MARCH, 2026**

**PAUL LILAN**

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**JUDGE OF APPEAL**

I certify that this is a true copy of the original

Signed

**DEPUTY REGISTRAR**

