

**IN THE COURT OF
APPEAL AT
ELDORET**

**(CORAM: GACHOKA, J. A. - IN
CHAMBERS) CIVIL APPLICATION NO.
E031 OF 2026**

BETWEEN

DAVID KIPLAGAT KANDA.....APPLICANT

AND

JOSEPH KIPKOECH CHEMOR.....RESPONDENT

(An application for extension of time to file a notice of appeal out of time from the judgment and decree of the Environment and Land Court at Eldoret (E.M. Washe, J.) delivered on 25th November 2025

in

ELC Suit No. 185 of 2016)

RULING

1. The Notice of Motion dated 19th March 2026 has supplicated the provisions of **section 4** of the Appellate Jurisdiction Act and **rules 41** and **49** of the Court of Appeal Rules 2022 seeking for leave appeal and that the notice of appeal be deemed as duly filed upon extension of time against *Washe, J's.* ruling delivered on 25th November 2025 in ***ELC Cause No. 185 of 2016***. The applicant acknowledged that the time within which to file his notice of appeal had expired hence the

application. He explained that he was not conversant with the adverse effects resultant from his withdrawal of the suit until 10th February 2026 when the

respondent's counsel was addressing the court in another related matter in Iten **ELC Cause No. 11 of 2025**.

2. The applicant continued that it has now realized that doors for him to pursue his claim under adverse possession were prematurely closed. He urged this Court to allow the application as the failure to file a notice of appeal in good time was due to his lack of knowledge that the orders issued were highly prejudicial and adverse to his right to seek justice; that he sought review and the setting aside of the adverse orders in Eldoret **ELC Cause No.185 of 2016** but the same was not allowed as he was advised to pursue an appeal instead; further, the respondent stood to suffer no prejudice if the orders sought were granted; finally, the application was filed timeously.
3. The applicant further filed his written submissions and list of authorities dated 29th April 2026. He urged this Court to consider his application that ought to benefit from the exercise of this Court's discretion.
4. I have considered the application and analyzed the law. The applicant seeks to file his notice of appeal out of time. The applicant has urged this Court to invoke the discretion set out

in

rule 4 of the Court of Appeal Rules 2022 which is wide and not exhaustive. In determining an application of this nature, this Court is alive to the factors taken into account namely the merit of the appeal, the prejudice, if any, to be suffered by the respondent and the period and length of delay. (See **Paul Wanjohi Mathenge vs. Duncan Gichane Mathenge [2013] eKLR**).

5. I have considered the reasons advanced by the applicant and the period it took to file the application. I find that the applicant deserves to benefit from the exercise of the Court's discretion set out in **rule 4** of this Court's rules. Accordingly, the applicant shall file his notice of appeal within 14 days from the date of this order failing which the orders issued shall lapse automatically without any further reference to this Court. The costs of the application shall abide the outcome of the appeal.

Dated and Delivered at Eldoret this 30th day of April, 2026.

M. GACHOKA C.Arb, FCIArb.

.....
JUDGE OF APPEAL

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

Signed
DEPUTY REGISTRAR