

**IN THE COURT OF
APPEAL AT
ELDORET**

**(CORAM: GACHOKA, J.A. - IN
CHAMBERS) CIVIL APPLICATION NO.
E032 OF 2026**

BETWEEN

VICTORIA KAMULE MASINDE.....APPLICANT

AND

ROSE NALIAKA KITAYI.....1ST RESPONDENT

LOISE CHESIKEN PSENJEN.....2ND

RESPONDENT STEPHEN KIPLAGAT

PSENJEN.....3RD RESPONDENT

(An application for extension of time to file a record of appeal out of time against the judgment and decree of the Kitale Environment and Land Court (C.K. Nzili, J.) delivered on 5th November 2025)

in

**ELC Cause No. E005 OF 2022
(OS)**

RULING

1. In her Notice of Motion dated 23rd March 2026, the applicant has invoked the provisions of **Rule 4** of the Court of Appeal Rules, section 3A and 3B of the Appellate Jurisdiction Act and **Article 159 (2) (d)** of the Constitution seeking leave to file and serve her record of appeal out of time against the judgment of *Nzili, J.* in Kitale **ELC Cause No. E005 of 2022**

(OS) delivered on 5th

November 2026 (*sic*). She further seeks an order for stay of execution of the impugned judgment pending the hearing and determination of the intended appeal.

2. I will state at the outset that the prayer seeking stay of execution of the judgment will not be considered as it can only be determined by a three-judge bench. I will therefore only constrain myself to the facts giving rise to the application for extension of time. Those facts are set out in the grounds on the body of the Motion and the supporting affidavit of the applicant.
3. The gist of the Motion is that the applicant, being dissatisfied with the judgment of the trial court, filed her notice of appeal in good time. However, she was unable to file the record of appeal as she was supplied with the decree late on 9th February 2026. She explained that the delay was not inordinate, deliberate or intended to obstruct justice. The applicant prayed that the application be granted as it was in the interest of justice that the orders sought are granted. Further, the application was filed timeously.
4. The application was unopposed by the 1st respondent in her replying affidavit sworn on 29th April 2026. She prayed that the application be dismissed for the following reasons: the

application

was defective as it was supported by an undated affidavit; the applicant failed to disclose that she applied for typed proceedings; that no reasons have been advanced for this Court to exercise its discretion; that the explanation for the delay is an afterthought and thus the delay was inexcusable; that no prejudice would be occasioned upon the applicant; and finally, the respondent stood to suffer prejudice as she was denied from enjoying the fruits of her judgment.

5. Though I was not impressed with the applicant's written submissions, I have the 1st respondent's written submissions dated 29th April 2026. It was submitted that the application was unmerited. She prayed that the same be dismissed.
6. I have considered the application, the response, the written submissions on record and analyzed the law. The applicant seeks the leave of this court to file and serve her record 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**).

7. In this application, the applicant has explained that since they could not procure the decree in good time, which has now been obtained, she was unable to file her record of appeal within good time.
8. In opposition, the 1st respondent was of the view that the supporting affidavit was defective as it was undated. I have looked at the said supporting affidavit. I have noted that it is dated “23rd ... 2026”. This court notes that the intention to date the application was there, but for some reason, was not conclusive. I find that this is a case for invocation of **Article 159** of the Constitution. Accordingly, I will not strike out the affidavit.
9. The 1st respondent further stated that the prayers refer to a non-existent judgment delivered on 5th November 2026. While that observation is true, the applicant went to the extent of annexing the judgment that was delivered on 5th November 2025. I therefore find that error is curable under the oxygen principles and the dictates of **Article 159** of the Constitution.

10. Considering the above, this Court finds that the reasons for delay have been explained. The applicant has further procured the decree. Furthermore, the period of delay is not inordinate. Accordingly, the Notice of Motion dated 23rd March 2026 is allowed. The applicant shall file and serve her record of appeal within 14 days from the date of this order. The costs of the application shall abide the outcome of the appeal.

It is so ordered.

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

M. GACHOKA C.Arb, FCI Arb.

.....
JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR