



**Owino v Onyango & 2 others (Civil Application E023 of 2026)
[2026] KECA 863 (KLR) (30 April 2026) (Ruling)**

Neutral citation: [2026] KECA 863 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT ELDORET
CIVIL APPLICATION E023 OF 2026
PM GACHOKA, JA
APRIL 30, 2026**

BETWEEN

CHRISTINE OWINO APPLICANT

AND

MARY ANYANGO ONYANGO 1ST RESPONDENT

EMMANUEL OTIENO OWINO 2ND RESPONDENT

MARY NABUSU OWINO 3RD RESPONDENT

(An application for extension of time to appeal against the ruling and order of the Eldoret High Court (R. Nyakundi, J.) delivered on 10th March 2022 in HCSC No. 58 of 2020)

RULING

1. The Notice of Motion before me for my determination is dated 2nd March 2026. It is stated to be governed by sections 1A, 1B, 3, 3A, 3B, 63 (e) and 66 of the Civil Procedure Act, order 42, rule 6, order 51, rule 1 of the Civil Procedure Rules, rules 4, 5 (2) (b), 12 and 41 (1) (b) (ii) of the Court of Appeal Rules, 2022 and sections 3A, 3B and 7 of the Appellate Jurisdiction Act seeking the following reliefs:

SUBPARA (a)

... Spent;

SUBPARA b.

That the time within which the Applicant ought to have filed the application for leave to appeal be enlarged and/or extended;

SUBPARA c.

That the time within which the Applicant ought to have filed and served the Notice of Appeal and the Memorandum of Appeal be enlarged and/or extended;



SUBPARA d.

That leave be granted to the Applicant to file his intended appeal to the Court of Appeal;

SUBPARA e.

That there be stay of proceedings in the ELDORET HCSUCC. NO. 58 OF 2020 IN THE ESTATE OF JOSEPH ERIC OWINO NYABURI pending the hearing and determination of this application and the intended appeal to the Court of Appeal;

SUBPARA f.

That costs of the application be in the cause.

2. Before delving further into the merits or otherwise of the application, I must address two issues. Firstly, the applicant has invoked the provisions of the *Civil Procedure Act* and the rules thereunder. It is incumbent to remind parties that this Court is a creature of the *Appellate Jurisdiction Act*. It is only governed by the dictates of that statute. For that reason, the provisions of the *Civil Procedure Act* and its Rules do not apply to this Court.
3. Secondly, under prayer (e) of the application, the applicant has sought stay of proceedings of the matter the subject of appeal. Under the Court of Appeal Rules, 2022, such an application can only be heard by a three-judge bench. I will therefore neither consider the facts supporting that issue nor determine it altogether.
4. The application is based the supporting affidavit of applicant, sworn on 2nd March 2026. The facts giving rise to the application as set out therein are that the trial court rendered a ruling on 10th March 2022 distributing the estate of the deceased in Eldoret HCSC No. 58 of 2020. The applicant is aggrieved by those findings. She annexed a draft memorandum of appeal expediting the reasons it was dissatisfied with those findings.
5. The applicant contended that she filed her notice of appeal dated 21st March 2022 on 23rd March 2022 but did not seek leave to appeal for the reason that it was exploring the possibility of settling the dispute out of court. However, those negotiations bore no fruit. She urged this Court to allow the application for the reason that it was necessary to enlarge time in order to ventilate her appeal which raised meritorious issues. Further, the application was made in good faith and did not prejudice the respondents.
6. The application is only opposed by the 2nd respondent. He filed a replying affidavit sworn on 27th April 2026. He urged this Court to dismiss the application on account of the following reasons: the application was res sub judice as there was a similar application pending before the High Court. It was therefore an abuse of the process of the Court; this Court is not guided by the *Civil Procedure Act*; the grounds enunciated by the applicant in support of the appeal were not merited; that the application is intended to delay and frustrate the beneficiaries from enjoying the estate of the deceased; the applicant had not met the threshold for the reliefs sought; the delay was not explained; and the applicant was guilty of laches.
7. The applicant also filed written submissions dated 28th April 2026.

In summary, she urged this Court to exercise discretion in her favor as she had demonstrate compelling reasons to warrant the issuance of the reliefs sought.



8. The discretionary power to file an appeal out of time is set out in Rule 4 of this Court's Rules. The governing principles were set out by this Court in the case of Wasike vs. Swala [1984] KLR 591 as follows:

“As Rule 4 now provides that the Court may extend the time or such terms as it thinks just, an applicant must now show, in descending scale of importance, the following factors:

- b. That there is merit in his appeal.
- c. That the extension of time to institute and/or file the appeal will not cause undue prejudice to the respondent; and
- d. That the delay has not been inordinate.”

9. I have considered the application and the grounds enunciated therein. At paragraph 4 of the supporting affidavit, the applicant deposed as follows:

“That following the filing of the notice of appeal, we did not proceed to file the application for leave to appeal in the first instance since we thought it best to try and talk/negotiate amongst ourselves in promoting the alternative justice systems and to save on litigation hustle, however, our well-meaning negotiations did not entirely bear fruit hence the delay.”

10. The applicant contended that it did not file the present application as it was exploring the possibility of out of court settlement. However, I do not have any evidence to prove that allegation, withal, was not confirmed by the respondents. The applicant has taken a whopping four years to bring this application. This delay is

inordinate and from the reasons given, is unexplainable. I am therefore of the view that the applicant was never interested in pursuing this appeal.

11. For these reasons, I am inclined to dismiss the Notice of Motion dated 2nd March 2026. However, since this is a family dispute, each party shall bear its own costs.

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

