



REPUBLIC OF KENYA



**Odera v Wesonga (Civil Application E120 of 2025)
[2026] KECA 810 (KLR) (24 April 2026) (Ruling)**

Neutral citation: [2026] KECA 810 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT KISUMU
CIVIL APPLICATION E120 OF 2025
HA OMONDI, JA
APRIL 24, 2026**

BETWEEN

ALFAYO JOHN MAJON ODERA APPLICANT

AND

ALEX OMONDI WESONGA RESPONDENT

(Being an application for extension of time to file and serve a Notice of Appeal and Record of Appeal against the Judgment of Environment and Land Court at Kakamega (Ohungo, J.) dated 13th May 2025 in Case No. E023 of 2023)

RULING

1. Alex Omondi Wesonga, the respondent herein lodged appeal Kakamega No. Environment and Land Court Appeal (ELCA) No. E023 of 2023 against the decision of the Butali Magistrate's court in Butali MCELC No. E024 of 2021; the appeal was duly heard and determined by Ohungo, J, on the 13th May 2025; the judgment being delivered through Microsoft teams from Nyamira Court. The applicant was aggrieved with the judgment delivered by Ohungo Judge, in Kakamega ELCA No. E023 of 2023 delivered on 13th May 2025, in which the trial court's holding that the respondent was found to be in contempt was set aside. The applicant's counsel filed an application dated 19th May 2025, seeking stay of execution of the decision, and the same was eventually determined on 16th July 2025. While the application was pending determination, time to file and serve the notice of appeal lapsed hence the need to seek enlargement to file the same out of time.
2. This has thus led to the Notice of motion dated 6th August, 2025, supported by the affidavit of Alfayo John Majoni Odera seeks that time be extended for the applicant to file and serve the Notice of Appeal and Record of Appeal.
3. It is explained that the delay in filing the appeal was due to waiting for the court ruling and administrative duties of transfer of the original court file in ELCA No. E023 of 2023, bearing in mind



that Ohungo, Judge delivered the judgments while at Nyamira High Court, the physical court file took some time to be availed at Kakamega registry hence the delay to file and serve the Notice of Appeal within the prescribed period; that since the court has now made its orders allowing the stay pending appeal the applicant prays to be given leave to file a notice of appeal and appeal court on time.

4. In a replying affidavit sworn by Alex Omondi Wesonga, the respondent herein, the application is opposed on grounds that the reason given for the delay is mischievous because, whereas on one hand the applicant claims that he was not able to access the physical court file which was still with the learned judge at Nyamira, he at the same time states that he filed the application dated 19th May, 2025, which was filed six (6) days after delivery of the impugned judgment. It is pointed out that the judiciary has in place the e-filing platform where parties and court users have the ability to file suits and even lodge documents and pay for them independently; and that the applicant has not given reasons why he never lodged the notice of appeal on the online platform and paid for the same within.
5. The Court is urged to find that there never was any obstacle preventing the applicant from filing documents, including the Notice of Appeal, and that he has always had the opportunity to file his notice of his intention to appeal; and the same ought to be dismissed with costs.
6. The discretion that I am called to exercise in the determination of this application is unfettered and is provided under rule 4 of the Court of Appeal Rules which provides as follows:

The court may, on such terms as it thinks just, by order extend the time limited by these Rules, or by any decision of the Court or of a superior court, for the doing of any act authorized or required by these Rules, whether before or after the doing of the act, and a reference in these Rules to any such time shall be construed as a reference to that time as extended.

7. Rule 4 of the Court of Appeal Rules does not provide for factors the court ought to consider in an application for extension of time but courts have devised appropriate principles to be applied in achieving a ‘just’ decision in the circumstances of each case. The case of *Leo Sila Mutiso vs. Hellen Wangari Mwangi* [1999] 2 EA 231 which is the locus classicus, laid down the parameters as follows:

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

8. I acknowledge that indeed, the Supreme Court of Kenya in the case of *Nicholas Kiptoo Korir Arap Salat vs. IEBC* [2014] eKLR set down the guiding principles to consider in the exercise of discretion. One other consideration included by the learned Judge in the case of *Julius Kamau Kithaka vs. Waruguru Kithaki & 2 Others* (2013) eKLR is whether prima facie the intended Appeal/Appeal has chances of success or is a mere frivolity.
9. On the issue as to whether or not the intended appeal has no chance of success, this Court is conscious of the fact that it is not the role of a single judge to determine the merits or otherwise of the appeal. This Court has held in the case of *Athuman Nasura Juma vs. Afwa Mohammed Ramadhan* [2016] eKLR:

“...this court has to be careful to ensure that the intended Appeal has merit or not is not an issue to be determined with finality by a single Judge”.



10. I bear in mind the afore-going principles whilst determining this application. In this case the applicant in his submissions has attempted to explain the delay, laying blame on the physical bottlenecks in the administration within the Judiciary; with the greatest of respect the applicant is being less than candid, indeed as pointed out, the judiciary has put in place digital filing of documents, and the technical-colored sob-story being weaved by the applicant, does not flavour his argument. Consequently, the reasons presented by the applicant do not persuade this court to positively exercise its discretion; and the application is dismissed with costs to the respondent.

DATED AND DELIVERED AT KISUMU THIS 24TH DAY OF APRIL, 2026.

H. A. OMONDI

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JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR

