



**Sampuengwe v Samtuenkwe (Civil Application E036 of 2025)
[2026] KECA 884 (KLR) (8 May 2026) (Ruling)**

Neutral citation: [2026] KECA 884 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAKURU
CIVIL APPLICATION E036 OF 2025
MB KIARARIA, JA
MAY 8, 2026**

BETWEEN

JULIUS SAMPUENGWE APPLICANT

AND

SAMSON KINYAMAL SAMTUENKWE RESPONDENT

(An application seeking extension of time to file and serve a Notice of Appeal from the judgement of the Environment and Land Court at Kilgoris (M. N. Mwanyale J.) delivered on 9th February 2026 in Kilgoris ELCLA No. E018 of 2025)

RULING

1. By a Notice of Motion application dated 5th March 2026 the Applicant invokes this Courts unfettered jurisdiction under Rule 4 of the Court of Appeal Rules and in the main seeks extension of time to file and serve a Notice of Appeal against the judgment of the Environment and Land Court M.N. Mwanyale J in Kilgoris ELCLA No. EO18 of 2025 delivered on 9th February,2026 dismissing his appeal thus upholding the legality of the Respondent’s ownership and certificate of title in respect of Transmara /Olosakwana/A/804.
2. The applicant is aggrieved by that judgment and desires to appeal to the Court of Appeal but finds his path impeded because he did not give notice of his intention to do so by lodging a Notice of Appeal with the registrar of the superior Court within 14 days after the date of the decision sought to be appealed as prescribed in Rule 77[2] of the Court of Appeal Rules 2022.
3. Considering that the decision sought to be appealed was delivered on 9th February 2026 the applicant ought to have lodged his notice of appeal by 23rd February 2026. He brought the instant application for extension of time on 5th March,2026 under certificate urgency which is about eleven days late.
4. In his grounds and the affidavit in support of the motion he attributes the delay in filing the notice of appeal to transitional hiccups in formalising the change of representation from the law firm of



- Kiprotich Roberts & CO. Advocates who previously acted for him in the Environment and Land Court and Mugumya & Co. Advocates his current advocates which he asserts was beyond his control.
5. He explains that the consent required by his current advocate from the previous advocate to come on record under Order 9 Rule 9 of the Civil Procedure Rules was only obtained on 24th February, 2026 which was a day after the period for filing the notice of appeal had elapsed and adds that the delay was not deliberate, inordinate or intended to obstruct the course of justice.
 6. He further contends that his intended appeal is arguable with high chances of success, the respondent shall not suffer no prejudice that cannot be compensated by costs and this Court has unfettered discretion under rule 4 of the Rules and it is in the interest of justice that this application be allowed.
 7. I have not seen any replying affidavit in opposition to the application for extension of time and from the Applicant's written submissions dated 13th March 2026 it is apparent that none was filed or served.
 8. In this regard the Applicant submits that the said application is unopposed as the Respondent has not given any response thereto and the time for doing so after service was effected has elapsed. According to the affidavit of service sworn by the Applicant's advocate service of the application was effected on 11th March 2026 through the Respondent's Advocates email address shiraiisrael2@gmail.com and the same was duly acknowledged while service of the applicant's written submissions was effected on 14th March 2026 through the same medium.
 9. Both Parties were on 8th April 2026 notified by the Deputy Registrar of this Court that the application will be disposed by way of written submissions before a Single Judge Bench on 23rd April, 2026 and reminded to comply with the directions regarding service and filing of submissions before the hearing date. The Respondent did not comply with the Court's directions and the application is thus unopposed.
 10. The applicant has urged me to find that the application is merited warranting the exercise my discretion in his favor by extending time to file and serve the notice of appeal to enable pursue his appeal and the question is whether i should do so.
 11. I have considered the grounds of the application for extension of time, the affidavit in support thereof, the written submissions cited case law as well as the legal principles governing the exercise of this Court's jurisdiction when considering an application for extension of time. Those principles are well settled. They have been neatly set out in the often cited case of Leo Sila Mutiso Vs Hellen Wangari Mwangi [1999] 2 EA 231. It is discretionary jurisdiction which is both broad and unfettered but which must be exercised judiciously not capriciously. The considers the length of the delay, the reason for the delay and whether it is plausible, the likely prejudice to the respondent if the extension is acceded to and possibly the chances of the intended appeal.
 12. I have already found that the duration of the delay was eleven (11) days which is not inordinate. I also find the reason given for the delay plausible. The applicant moved the court without delay under certificate of urgency. The Respondent has not opposed the application and i cannot see any prejudice that can be suffered by the Respondent by grant of extension of time to file the intended, appeal at any rate not one that cannot be compensated by way of costs.
 13. In the upshot, I find the application dated 5th March, 2026 is merited. Accordingly, I allow it by extending time within which the applicant shall file and serve a notice of appeal against the judgment of the Environment and Land Court dated 9th February, 2026. I shall however not deem the Notice of Appeal annexed to the supporting affidavit in support of the Motion as duly filed upon payment of the requisite fees as proposed by the applicant. The Applicant shall file and serve the Notice of appeal within 14 days from today. The costs of the application shall abide the appeal.



DATED AND DELIVERED AT NAKURU THIS 8TH DAY OF MAY, 2026.

MURUNGI B. KAIRARIA

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JUDGE OF APPEAL

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

Signed.

DEPUTY REGISTRAR

