



**Nyangoka & 2 others v Osano & 2 others (Civil Application
E152 of 2024) [2025] KECA 320 (KLR) (21 February 2025) (Ruling)**

Neutral citation: [2025] KECA 320 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT KISUMU
CIVIL APPLICATION E152 OF 2024
AO MUCHELULE, JA
FEBRUARY 21, 2025**

BETWEEN

ALLOYS OMARE NYANGOKA 1ST APPLICANT

JUSTUS ONSONGO NYANGOKA 2ND APPLICANT

HENRY NTOME NYANGOKA 3RD APPLICANT

AND

VINCENT GITENGE OSANO 1ST RESPONDENT

ROBINA KWAMBOKA KABWORI 2ND RESPONDENT

IRENE NYARESO OSANO 3RD RESPONDENT

*(An application for the extension of time to file a notice of appeal out of time
against the Judgment and Decree of the Environment and Land Court of Kenya at
Nyamira (Mugo Kamau, J.) dated 30th May 2024 in ELC Petition No. E013 of 2023)*

RULING

1. The parties herein are related. The late Peter Osano Nyangoka was the husband of the 1st respondent, Robina Kwamboka Kabwori. Vincent Gitenge Osano, 2nd respondent, and Irene Nyareso Osano, 3rd respondent, are their children. The late Nyangoka Orucho Osano was the father of the later Peter Osano Nyangoka and the applicants, Alloys Omare Nyangoka, Justus Onsongo Nyangoka and Henry Ntome Nyangoka.
2. The late Nyangoka Orucho Osano was the registered owner of LR. East Kitutu/Mwamangera/626 which he had inherited from his late father, Orucho Osano. In the Chief Magistrate's Court at Nyamira, the respondents contended that this was ancestral land in which they had been living for 47 years, each of them occupying a separate portion, and that the applicants had unlawfully and



fraudulently subdivided the land into 3700, 3701 and 3702 to be shared among them. They sought the declaration that the subdivisions were illegal; a declaration that a section of the land was held in trust for them; and a mandatory injunction compelling the applicants to transfer the section measuring 0.9 hectares to them. The trial court heard the dispute, which the applicants had opposed, and allowed it. Aggrieved by the decision, the applicants appealed to the Environment and Land Court at Nyamira. The learned judge (Mugo Kamau, J.) heard the appeal which he dismissed on 30th May 2024.

3. Before me is the applicant's application under Rule 4 of the [Court of Appeal Rules, 2022](#) seeking leave to file and serve the notice of appeal and the record of appeal out of time. Their case is that on the day when the impugned judgment was delivered, their then advocate was absent. They became aware of the decision on 6th June 2024, after the 14 days allowed to file a notice of appeal had expired. They stated that they were aggrieved by the decision and seek an opportunity to challenge it on appeal; that the dispute involves land and the intended appeal has high chances of success; and that the delay in filing the appeal was because of a miscommunication between them and their lawyers.
4. The application was served but did not elicit any response.
5. The impugned judgment was delivered on 30th May 2024. The record shows it was delivered in the absence of either counsel. The applicants indicate that they did not become aware until 6th June 2024, about 6 days later. They were not themselves in court. This application was brought on 22nd July 2024, just under two months from the date the judgment was delivered. If the applicants became aware of this judgment on 6th June 2024, the 14 days within which to file a notice of appeal had not lapsed.
6. This is a family land dispute. One can discern that the question whether part of the land was held in trust for applicants and the question whether there was fraud and illegality in its sub-division and sharing to the respondents will occupy the mind of the appellate court, if the application is allowed. There is no indication that the respondents will be prejudiced, if time is extended.
7. Considering the principles that have been settled by this Court when dealing with Rule 4 applications, I determine that the delay in question was not long and there has been a plausible explanation. The justice of the case demands that the applicants be allowed to challenge the judgment on appeal.
8. Consequently, I allow the application. The applicants shall have seven (7) days within which to file and serve a notice of appeal, and 45 days within which to file and serve the memorandum and record of appeal.

DATED AND DELIVERED AT KISUMU THIS 21ST DAY OF FEBRUARY 2025.

A. O. MUCHELULE

.....

JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR

