



REPUBLIC OF KENYA



KENYA LAW
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**Nyongesa v Nyongesa (Civil Application E164 of 2024)
[2025] KECA 322 (KLR) (21 February 2025) (Ruling)**

Neutral citation: [2025] KECA 322 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT KISUMU
CIVIL APPLICATION E164 OF 2024
AO MUCHELULE, JA
FEBRUARY 21, 2025**

BETWEEN

AMINA NELIMA NYONGESA APPLICANT

AND

SHEM MUKOYANI NYONGESA RESPONDENT

(An application for the extension of time to lodge an appeal out of time against the judgment and decree of the Environment and Land Court of Kenya at Kakamega (Ohungo, J.) dated 23rd September 2024 in ELC Case No. E049 of 2022)

RULING

1. Rule 4 of the Court of Appeal Rules, 2022 provides as follows:

“ 4. Extension of time

The Court may, on such terms as may be 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.”

2. The power donated by the Rule to extend time is discretionary, and the Court will consider the period of delay; the reasons for the delay; the possible chances of success of the intended appeal, if the application is granted; and whether, in allowing the application, the respondent will be unduly prejudiced (see Paul Wanjohi Mathenge vs Duncan Gichane Mathenge [2013] eKLR). Lastly, in dealing with the application for extension of time to appeal, the Court bears in mind the applicant’s constitutional right to appeal against the imperative, also constitutional, that matters coming to the Courts have to be expeditiously dealt with in keeping with the statutory timelines that have been set.



3. Before me is an application seeking the extension of time to file and serve the notice of appeal and also the memorandum and record of appeal. The application is dated 4th November 2024. There was a judgment that was delivered on 23rd September 2024 by the Environment and Land Court at Kakamega (Ohungo, J) by which the court allowed the appeal by the respondent, Shem Mukoyani Nyongesa, against the decision of the magistrate's court that had allowed the suit by the applicant, Amina Nelima Nyogesa, against the respondent over a parcel of land.
4. The applicant states that neither her nor her advocate was present at the time of the delivery of judgment by the superior court; that the notice for the delivery of the judgment had not been served on them; that she became aware of the judgment a month after delivery; that she was aggrieved by the decision and is desirous of challenging it on appeal. She states that she has an arguable appeal.
5. The application was served on the respondent who did not file any response. It follows that the factual basis of the application has not been controverted.
6. Counting from the time the notice of appeal was supposed to be filed, the delay was for about one month. This was a short delay. The reasons for the delay are satisfactory. This is a land dispute. There is no indication that the respondent will be prejudiced, if extension is granted.
7. In conclusion, the applicant merits the exercise of this court's discretion in her favour. I allow the application. Within 7 days from today, the applicant shall lodge and serve the notice of appeal, and, within 45 days thereafter, she shall lodge and serve the memorandum and record of appeal.

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

A. O. MUCHELULE

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JUDGE OF APPEAL

