



**Estate of Julius Mabusi Nandasaba alias Julius Wafula alias Julius Mabusi alias Jairus Wafula
 Represented by Benson Juma Mabusi and Mathews Simiyu Mabus v Satia & Partners & 9
 others (Civil Application E032 of 2024) [2025] KECA 743 (KLR) (5 May 2025) (Ruling)**

Neutral citation: [2025] KECA 743 (KLR)

**REPUBLIC OF KENYA
 IN THE COURT OF APPEAL AT ELDORET
 CIVIL APPLICATION E032 OF 2024**

JM MATIVO, JA

MAY 5, 2025

BETWEEN

**ESTATE OF JULIUS MABUSI NANDASABA ALIAS JULIUS WAFULA ALIAS
 JULIUS MABUSI ALIAS JAIRUS WAFULA REPRESENTED BY BENSON JUMA
 MABUSI AND MATHEWS SIMIYU MABUSI APPLICANT**

AND

**RICHARD SATIA & PARTNERS 1ST RESPONDENT
 WILSON WALUNYWA SIMWENYL (SUING AS THE LEGAL REP OF THE
 LATE JESTIMORE SIMWENYI) 2ND RESPONDENT
 SAMSON SICHANGI 3RD RESPONDENT
 EMMANUEL CHONGE SICHANGI 4TH RESPONDENT
 RASMI WASILWA KICHOTI 5TH RESPONDENT
 MOHAMMED WEKESA 6TH RESPONDENT
 WILLIAM KIRWA 7TH RESPONDENT
 RONALD SICHANGI 8TH RESPONDENT
 NICK SICHANGI 9TH RESPONDENT
 JULIUS TIRIKOI 10TH RESPONDENT**

*(Being an application from the order of the Environment and Land Court of
 Kenya at Kitale (I. Nyagaka J.) dated 23rd April 2024 in ELC Case No. 24 of 2021)*



RULING

1. Vide an application dated 31st May 2024, brought under Section 3A and 3B of the [Appellate Jurisdiction Act](#) and Rule 4 of the Court of Appeal Rules 2022, the applicant prays for extension of time within which to file and serve notice of appeal against the ruling issued 23rd April 2024 in Kitale Environment and Land Case No. 24 of 2021.
2. The application is premised on the grounds listed on the face of the application and the applicant's supporting affidavit sworn on 31st May 2024 by Mathews Simiyu Mabusu, the administrator of the estate of the Julius Mabusu Nandasaba. The grounds in support of the application are that:- (a) the impugned ruling was to be delivered on 23rd April 2024 and a notice of appeal was timeously filed on 2nd May 2024; (b) the notice of appeal was inadvertently not served upon the respondents because of an honest mistake of not instructing the advocate on record on time due to communication breakdown; (c) there has been no inordinate delay in filing the instant application; the appeal is arguable with overwhelming chances of success; (d) no prejudice shall be suffered by the respondents if the prayer sought are granted.
3. The application is opposed vide replying affidavit sworn on 14th October, 2024 by Wilson Walunywa Simwenyi who is the legal representative of the Estate of the late Jestimore Simwenyi. The deponent avers that: (a) the applicant has totally failed to show the reasons for the unreasonable and inordinate delay in serving the notice of appeal against the respondents; (b) the applicant has not furnished the court with a certificate of delay; (c) the intended appeal is not arguable since the applicant moved the court as a proposed interested party in an already concluded matter and the court was functus officio; (d) the applicants have never been in possession of property LR No. 5335/24 since the year 1994.
4. Vide submissions filed in court on 14th October 2024, Mr. Rioba learned counsel for the 1st and 2nd respondents contended that the applicant has no legally recognized right in the suit property meriting him being joined in Kitale ELC No, 24 of 2022 and neither the applicant nor his family have ever been in occupation of the suit property since 1994 to date and their interest over the suit property was determined in Eldoret High Court No. 141 of 1994 and Nakuru High Court Civil Appeal No. 164 of 1995.
5. It is noteworthy that this ruling was delivered without the benefit of the applicant's submissions which were not on record as at the time of writing the ruling.
6. I have considered the application, the affidavit in support thereto and its annexures – including the ruling of the Court, the replying affidavit, and the written submissions by the 1st and 2nd respondent. The only question for determination is whether the applicants have met the threshold for the exercise of the Court's discretion to grant leave for them to file a notice and record of appeal out of time.
7. The application is governed by Rule 4 of the Court of Appeal Rules which provides that:

“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.”



8. The Supreme Court in *Nicholas Kiptoo Arap Korir Salat vs. Independent Electoral and Boundaries Commission & 7 Others* [2014] eKLR summed up the applicable considerations as follows: -
- i. Extension of time is not right of a party. It is an equitable remedy that is only available to a deserving party at the discretion of the Court;
 - ii. A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the Court;
 - iii. Whether the court should exercise the discretion to extend time, is a consideration to be made on a case- to-case basis;
 - iv. Whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the Court;
 - v. Whether there will be any prejudice suffered by the respondents if the extension is granted;
 - vi. Whether the application has been brought without undue delay; and,
 - vii. Whether in certain cases, like election petitions, public interest should be a consideration for extending time.
9. Based on the cited decision, it is apparent that this application will be dispensed by determining whether the applicants have tendered sufficient reasons for not filing their notice of appeal within the stipulated time and whether the respondents will suffer any prejudice should the application be allowed.
10. Pursuant to the provisions of Rule 79 (1) of the Court of Appeal Rules, 2022 and considering that the ruling was delivered on 23rd April 2024 and indeed the notice of appeal was timely filed on 2nd May 2024, the applicant was required to serve the notice of appeal before or within 7 days after lodging a Notice of Appeal and the same should be served on all persons directly affected by the appeal. Therefore, the notice of appeal lodged on 2nd May 2024 ought to have been served by 9th May 2024. It is noteworthy that the instant application was filed on 31st May 2024 which is a delay of twenty-two (22) days. The applicant’s explanation is that there was a breakdown in communication between him and his advocate which led to a delay in issuance of instructions to have the Notice of Appeal served.
11. The Supreme Court of Kenya pronounced itself in the question of extension of time in the case of *Andrew Kiplagat Chemaringo vs. Paul Kipkorir Kibet* [2018] eKLR, and stated as follows:
- “the law does not set out any minimum or maximum period of delay. All it states is that any delay should be satisfactorily explained. A plausible and satisfactory explanation for delay is the key that unlocks the court’s flow of discretionary favour. There has to be valid and clear reasons, upon which discretion can be favourably exercisable.”
12. The explanation proffered by the applicant on the delay to serve the notice of appeal upon the respondents is in my view plausible, satisfactory and that the delay was in the circumstances excusable and not inordinate. Consequently, I find that the applicant merits the exercise of this Court’s discretion for the above stated reasons. I accordingly allow the applicant’s application dated 31st May 2024 on the terms that the applicant is granted extension of time to serve a notice of appeal dated 27th April 2024 against the ruling delivered by Nyagaka J. on 23rd April 2024 in Kitale ELC Case No. 24 of 2021 within 7 days from the date of this ruling. There shall be no order as to the costs of the application.

DATED AND DELIVERED AT ELDORET THIS 5TH DAY OF MAY 2025.



J. MATIVO

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JUDGE OF APPEAL

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

Signed.

DEPUTY REGISTRAR.

