



**Rono (Sued as the Legal Representative of the Estate of Sofia Tamarta Lagat alias Tamarta Lagat - Deceased) & another v Lagat; Kipkoech (Sued as the Legal Representative of the Estate of Hellen Jeptum Rono - Deceased) (Interested Party) (Civil Application E009 of 2024) [2025] KECA 740 (KLR) (5 May 2025) (Ruling)**

Neutral citation: [2025] KECA 740 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT ELDORET  
CIVIL APPLICATION E009 OF 2024**

**JM MATIVO, JA**

**MAY 5, 2025**

**BETWEEN**

**EMILY JEBOR RONO (SUED AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF SOFIA TAMARTA LAGAT ALIAS TAMARTA LAGAT - DECEASED) ..... 1<sup>ST</sup> APPLICANT**  
**ANDREW KOSKEI ..... 2<sup>ND</sup> APPLICANT**

**AND**

**ESTHER JEPTANUI LAGAT ..... RESPONDENT**

**AND**

**DANIEL KIPKOECH (SUED AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF HELLEN JEPTUM RONO - DECEASED) ..... INTERESTED PARTY**

*(Being an application from the ruling of this Court  
(M. Warsame, JA) dated 27th day of May 2024)*

**RULING**

1. *Vide* an application dated 28<sup>th</sup> August 2022, brought under Section 3,(1) 3A, 3B (2) & (3) of the [Appellate Jurisdiction Act](#), Rules 34 (2) and 59 (1) of the [Court of Appeal Rules 2022](#), the applicants pray for extension of time for the filing of the appeal and the notice of appeal from the 27<sup>th</sup> May 2024 to a date as determined by the Court.
2. The motion is supported by grounds on its body and a supporting affidavit sworn on 28<sup>th</sup> August, 2024 by Kimaiyo Keroney Arap Sego, Advocate for the applicants. The grounds are that:



- (a) the application for leave was heard on 20<sup>th</sup> May 2024 and the same was fixed for delivery on 22<sup>nd</sup> May 2024. However, the same was not delivered and that the applicants learnt from the registry that the same had been delivered on 27<sup>th</sup> May 2024;
  - (b) there was non compliance with Rule 34 (2) of the *Court of Appeal rules* since no notice of delivery of the ruling was served by the Deputy Registrar;
  - (c) a letter of protest was written to the Deputy Registrar, Court of Appeal on 16<sup>th</sup> July 2024 and on 22<sup>nd</sup> July 2024 the applicants received a notice from the Court on the outcome of the application and on 26<sup>th</sup> August, 2024 the applicants received a notice from the Court that the ruling had been delivered and the case closed;
  - (d) the applicants were unable to file their appeal within 14 days from 27<sup>th</sup> May 2024 as they were not aware of the ruling hence the delay.
3. In opposing the application, the respondent filed a replying affidavit sworn on 5<sup>th</sup> April 2024 dated 27<sup>th</sup> February 2025 stating that:
- (a) there has been an inordinate delay of three months in bringing the instant application;
  - (b) no cogent explanation has been offered for the delay;
  - (c) the draft memorandum of appeal is not arguable;
  - (d) the respondent will be prejudiced if the instant application is allowed since she was forcefully evicted from the suit property rendering her destitute;
  - (e) the applicant have not demonstrated that they applied for typed proceedings in the 1<sup>st</sup> instance;
  - (f) the advocate in conduct of the matter has no locus standi in the matter.
4. The application was disposed of by way of written submissions. For the applicants, the firm of K.K Arap Sego & CO Advocates filed submissions dated 20<sup>th</sup> March 2024 while the respondent’s submissions are dated 17<sup>th</sup> May 2024. I have considered the grounds in support of the application, the affidavit opposing the application, and the submissions by the parties’ advocates.
5. Rule 57 of the *Court of Appeal Rules 2010* which deals with rescinding of orders (now Rule 59 of the *Court of Appeal Rules 2022*) states as follows:
- “ 57 Any order made on an application heard by a single judge may be varied or
- (1) rescinded by that judge or in the absence of that judge, by any other judge or by the court on the application of any person affected thereby, if –
    - a. The order was one extending the time for doing any act, otherwise than to a specific date; or
    - b. The order was one permitting the doing of some act without specifying the date by which the act was to be done and the person on whose application the order was made has failed to show reasonable diligence in the matter.
  - (2) An order made on an application to the court may similarly be varied or rescinded by the court.”



- 6. It is evidently clear that the notice for delivery of ruling dated 20<sup>th</sup> May 2024 indicated that the ruling would be delivered on 22<sup>nd</sup> May 2024. Nevertheless, the said ruling was delivered on 27<sup>th</sup> May 2024 and it has not been controverted by the respondent that a notice of delivery of the ruling was not issued by the Deputy Registrar, Court of Appeal, Eldoret in compliance with Rule 34 (2) of the [Court of Appeal Rules, 2022](#).
- 7. Having considered the applicants' explanation for the delay in complying with the directions issued on 27<sup>th</sup> May 2024, I am persuaded that the non-issuance of a notice of delivery of ruling delivered on 27<sup>th</sup> May 2024 resulted in the non-compliance with the directions requiring the applicants to file their notice of appeal and record of appeal within 14 days. Consequently, pursuant to Rule 59 (1) (a) of the [Court of Appeal Rules, 2022](#), I order the applicants to file and serve their notice of appeal and record of appeal within 14 days from the date of this ruling.

**DATED AND DELIVERED AT ELDORET THIS 5<sup>TH</sup> DAY OF MAY 2025.**

**J. MATIVO**

.....

**JUDGE OF APPEAL**

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

Signed.

**DEPUTY REGISTRAR.**

