



REPUBLIC OF KENYA



**KENYA LAW**  
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**Nyamok v Omusi (Civil Appeal (Application) E041 of 2025)  
[2025] KECA 1397 (KLR) (30 July 2025) (Ruling)**

Neutral citation: [2025] KECA 1397 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT KISUMU  
CIVIL APPEAL (APPLICATION) E041 OF 2025**

**LK KIMARU, JA**

**JULY 30, 2025**

**BETWEEN**

**JOICE ANYANGO NYAMOK ..... APPLICANT**

**AND**

**JAMES AWENGE OMUSI ..... RESPONDENT**

*(Being an application for extension of time to file and serve notice of Appeal and record of Appeal from the judgment of the Environment and Land Court of Kenya at Migori (G.A. Ongondo, J) dated 20th November, 2024 in ELC No. E003 of 2021)*

**RULING**

1. Joice Anyango Nyamok, the applicant herein, moved this Court pursuant to Rule 4 of the [Court of Appeal Rules](#) seeking to be granted extension of time to lodge and serve the notice of appeal out of time. The grounds in support of the application are on the face of the application and supported by the annexed affidavit of the applicant. The applicant states that she was aggrieved by judgment delivered on 20<sup>th</sup> November, 2024 by the Environment and Land Court (ELC) Migori. The applicant states that after the delivery of the said judgment, her then advocate did not inform her of the said judgment until the time she was supposed to have lodged the appeal had expired. She learnt of the outcome of the case when she instructed her granddaughter to visit the advocate's office and got a copy of the judgment. The applicant attributes the delay in lodging the appeal in time to the failure by her erstwhile advocate to inform her in time of the judgment. She insists that she has a good and arguable appeal which she should be allowed to ventilate before this Court. She urged the Court to allow her to exercise her right of appeal so that she does not lose her land that was the subject matter of the dispute.
2. The application is opposed. James Agwange Omusi filed a replying affiant in opposition to the application. He deponed that the period of four (4) months' delay was inordinate and inexcusable. He swore that the appeal did not have any chance of success as it was not arguable. The respondent was not persuaded by the reasons advanced by the applicant for her failure to lodge the appeal in time, and



particularly the fact that there was paucity of evidence to support the applicant's assertion that she had regularly corresponded with her erstwhile advocate during the material period. He urged the Court to dismiss the application with costs.

- Both the applicant and the respondent filed written submissions in support of their opposing positions. This Court has carefully considered the said submissions together with cited authorities. This Court's jurisdiction under Rule 4 of the *Court of Appeal Rules* is discretionary. It is unfettered. In *Paul Wanjobi Mathenge v. Duncan Gichane Mathenge* [2013] eKLR. The Court held thus:

“The discretion under Rule 4 is unfettered, but it has to be exercised judicially, not on whim, sympathy or caprice. I take note that in exercising my discretion I ought to be guided by consideration of factors stated in previous decision of this Court including, but not limited to, the period of delay, the reasons for the delay, the degree of prejudice to the respondent and interested parties if the application is granted, and whether the matter raises issues of public importance.”

- In the present application, the applicant explained the reasons for the delay in lodging the appeal in time. There was miscommunication between herself and her former advocate. This Court notes the explanation given by the applicant, as an 84 years old senior, that she is dependent on her children and grandchildren to pursue an communication with her advocates. This is more so because of her reduced mobility. This Court is satisfied by the reason given by the applicant that she was let down by her former advocate who failed to inform her the outcome of the case despite her constant effort to try and communication with him. The reason given by the applicant is excusable. The delay in terms of length of time is a period of about a month from the time she became aware of the judgement, to the time of filing the present application, is not inordinate in the view of this Court. The dispute between the applicant and the respondent touches on ownership of land. The parties should be given a chance to have the dispute ventilated and, perhaps, finally resolved by this Court.
- The application has merit. It is hereby allowed. The applicant is granted leave to file the appeal out of time. The notice of appeal shall be filed and served within fourteen (14) days of today's date. The respondent shall have the costs of the application.

**DATED AND DELIVERED AT KISUMU THIS 30<sup>TH</sup> DAY OF JULY, 2025.**

**L. KIMARU**

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**JUDGE OF APPEAL**

I certify that this is a true copy of original.

Signed

**DEPUTY REGISTRAR**

