



REPUBLIC OF KENYA



KENYA LAW
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Nderi & 1709 others v County Government of Kirinyaga & 4 others (Civil Application E051 of 2025) [2025] KECA 1261 (KLR) (8 July 2025) (Ruling)

Neutral citation: [2025] KECA 1261 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NYERI
CIVIL APPLICATION E051 OF 2025
A ALI-ARONI, JA
JULY 8, 2025
[IN CHAMBERS]**

BETWEEN

OCTAVIOUS MURIUKI NDERI & 1709 OTHERS APPLICANT

AND

THE COUNTY GOVERNMENT OF KIRINYAGA 1ST RESPONDENT

THE CHIEF LAND REGISTRAR 2ND RESPONDENT

THE NATIONAL LAND COMMISSION 3RD RESPONDENT

THE COUNTY SURVEYOR 4TH RESPONDENT

THE HONOURABLE ATTORNEY GENERAL 5TH RESPONDENT

(An application seeking an extension of time to file an appeal against the Ruling of the Environmental and Land Court in Kerugoya (Mutungi, J.) delivered on 27th February 2025 in ELC Case No. 33 of 2018)

RULING

1. Before the court is an application by way of a notice of motion dated 28th March 2025, brought under Sections 3A and 3B of the *Appellate Jurisdiction Act*, and Rule 4 of the *Court of Appeal Rules* 2022, seeking leave to file and serve the notice of appeal out of time.
2. The application is predicated on the grounds stated in the motion, which have been rehashed in the joint supporting affidavit of Octavious Muriuki Nderi, Gaudenzio Warui Kiara, Josia Kinyua Kithinji and Peterson Gutu Kariuki, sworn on 28th March 2025, wherein it is stated that the suit against the respondents seeking orders of resettlement was commenced on 20th June 2018, and was active until 16th February 2022 when it was stood over generally; a notice to show cause on why the suit should



- not be dismissed was issued and scheduled for hearing on 20th March 2023 on which date the case was dismissed for non-appearance in the absence of parties and their counsel; they had no notice of the notice to show cause; they learnt of the dismissal of the suit late in the year 2023; in an application dated 21st December 2023 they sought for the dismissal order to be set aside, but the application was dismissed on 27th February 2025; they are old people and had relied on their counsel to inform them on the developments of the case but he let them down; they are dissatisfied with the order and intend to appeal; they have learnt that the time within which to file the notice of appeal has lapsed; they have opted to pursue the matter in person as they were frustrated by their advocate.
3. In support of the application, the applicants filed submissions dated 4th July 2025. They reiterated the facts in the supporting affidavit and urged the court to exercise its discretion in their favour. In support, they cited the case of *Julius Kamau Kithaka v. Waruguru Kithaka Nyaga & 2 Others*, [2013] KECA 106 (KLR).
 4. The applicants further submitted that the court should evaluate the length and reason for the delay, the chances of success of the intended appeal and whether the respondents would suffer prejudice if the court were to grant the extension. In support of this contention, they referenced the cases of *Leo Sila Mutiso v. Rose Hellen Wangari Mwangi* [1999] 2 EA p231, *Nicholas Kiptoo Arap Korir Salat v. IEBC & 7 Others* and *Salat v. Independent Electoral and Boundaries Commission & 7 Others* (Application 16 of 2014) [2014] KESC 12 (KLR). They stated further that they are unfamiliar with the law; they filed the memorandum of appeal on good time, and the appeal was recorded as Civil Appeal No. E053 of 2025; the only confusion they had was in filing and serving the notice of appeal; they have approached this Court without delay, as they are only 14 days late in filing and serving the notice of appeal; 28 day after the ruling was delivered against them; the delay is not ordinate; the intended appeal has a chance of success, considering the grounds outlined in the draft memorandum of appeal.
 5. The respondents, though served, did not file a response.
 6. I have considered the application and the supporting affidavit. The issue to be determined is whether the applicants are deserving of the orders sought. Rule 4 of the *Court of Appeal Rules* grants the court unfettered discretion in considering an application for extension of the time. In *Leo Sila Mutiso v. Helen Wangari Mwangi (supra)*, this Court set out the principles to be applied in the exercise of its discretion in the determination of any application under Rule 4 of its *Rules* as follows:

“The decision whether or not to extend time is discretionary. The Court in deciding whether to grant an extension of time takes into account the following matters: first, the length of the delay; second, the reason for the delay; thirdly (possibly) the chances of the appeal succeeding if the application is granted; and fourthly, the degree of prejudice to the respondent if the application is granted.”
 7. The delay of 14 days in the circumstances given above, which I find reasonable, is not inordinate. A cursory look at the memorandum of appeal indicates grounds that cannot be said to be idle.
 8. In the circumstances, I allow the application. The notice of appeal be filed and served within the next 14 days.
 9. I make no order as to costs.

DATED AND DELIVERED AT NYERI THIS 8TH DAY OF JULY, 2025.

ALI-ARONI

JUDGE OF APPEAL



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

signed

DEPUTY REGISTRAR

