



REPUBLIC OF KENYA



KENYA LAW
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**Kipkemoi v Rono (Civil Application E044 of 2025)
[2025] KECA 1185 (KLR) (4 July 2025) (Ruling)**

Neutral citation: [2025] KECA 1185 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAKURU
CIVIL APPLICATION E044 OF 2025**

LA ACHODE, JA

JULY 4, 2025

BETWEEN

DAVID KIPKEMOI APPLICANT

AND

CHEPKWONY ARAP RONO RESPONDENT

(Being an application for extension of time to lodge a Notice of Appeal and file and serve the Memorandum of Appeal and Record of Appeal out of time in the intended Appeal against the judgment and decree in the High Court at Bomet (Ng'arng'ar J.) dated 5th March, 2025 in Succession Appeal No. E046 of 2022)

RULING

1. By a Notice of Motion dated 14th April, 2025, brought under rule 4 of the [Court of Appeal Rules 2022](#), David Kipkemoi, the applicant seeks an extension of time to lodge a Notice of Appeal, and file and serve the Memorandum of Appeal and the Record of Appeal out of time. The intended appeal is against the judgment and Decree delivered in the High court at Bomet, on the 5th March, 2025, in Succession Appeal No E046 of 2022, by Ng'arng'ar J. He prays that the costs of the application be provided for.
2. The grounds of the application are set out on the face thereof, and deposed by the applicant in the supporting affidavit of even date. The applicant avers that the High Court at Bomet delivered a judgment in HC Succession Appeal No E046 of 2022 on 5th March, 2025. The ruling dismissed the applicant's appeal and upheld the ruling of the subordinate court that dismissed his Protest against the summons for confirmation of grant, filed by the respondent in the Estate of Tapelgaa Chepkosgei Mogor (deceased).
3. The applicant deposed that he and his advocate were not present in court when the judgment was rendered, neither did they have notice thereof. He became aware of the judgment a month later when his son visited the court registry. He was dissatisfied with the judgment and intends to appeal, but he



took some time to find himself another advocate and file this Notice of Motion and is therefore, out of time.

4. The applicant filed submission dated 20th May, 2025 through the firm of Messers Yegon and Mungai Advocates and urged that under rule 4, this Court has the discretion, for sufficient reasons, to extend the time lines in the rules. Counsel reiterated the grounds in the Notice of Motion and the depositions in the supporting affidavit and I need not regurgitate them here. Counsel referred to the cases of *Paul Wanjohi Mathenge* [2013] eKLR and *Nicholas Kiptoo Arap Korir Salat v IEBC & 7 others*, Supreme Court of Kenya Application No 16 of 2014, on the factors to be considered in determining an application for extension of time.
5. The respondent did not file a replying affidavit. He however, filed grounds of opposition and submissions, both dated 29th May, 2025, through the firm of Messrs Mitey and Associate Advocates and vehemently opposed the application. He submitted that the discretion to extend time must be exercised within set principles, such as were stated by the Court of Appeal in the case of *Omar Shurie v Marian Rashe Yafar*, (Civil Application No 107 of 2020) UR.
6. The respondent contended that the applicant was represented in the superior court, and the parties were notified of the date of judgment by the court registry. That the applicant knew he had filed an appeal, but failed to follow it up and attend court for judgment. The respondent also argued that the applicant has not annexed a draft memorandum of appeal and has not therefore, shown that his appeal raises triable issues with high chances of success.
7. Additionally, the respondent argued that this being a succession dispute, the applicant's appeal to the Court of Appeal is not as of right and he has not sought the requisite leave to appeal. Further, that the firm of M/s Yegon and Mungai Advocates came on record after judgment had been entered, and did not seek leave of court, or enter a consent with the advocate previously on record. He has also not included such a prayer in this application.
8. The respondent urged the Court to find that the applicant's appeal has no chances of success, that the reason for delay is unreasonable, and that the applicant's counsel lacks the legal standing to move the Court on his behalf.
9. Over the years this Court has developed principles upon which it exercises the discretion donated by the jurisdiction donated under rule 4 of the *Court of Appeal Rules, 2022*. Rule 4 provides as follows:

“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.”
10. The said principles were stated in *Leo Sila mutiso* as follows:

“It is now well settled that the decision whether or not to extend the time for appealing is essentially discretionary. It is also well settled that in general, the matters which this court takes into account in deciding whether to grant an extension of time are:
First, the length of the delay; secondly, 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”



11. Judgment in the intended appeal having been delivered on 5th March, 2025, the Notice of Appeal should have been filed by 19th March, to fall within 14 days from the date of judgment as required under rule 77(2). This motion seeking an extension of time to lodge the Notice of Appeal, and to file and serve the Memorandum and Record of Appeal out of time is dated 14th April, 2025.
12. The rules do not prescribe the number of days that may constitute inordinate delay. Each case is to be determined on its own facts, as held in *Andrew Kiplagat Chemaringo v Paul Kipkorir Kibet* [2018] eKLR in which the Court of Appeal stated that:

“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.”

The actual length of delay in the instant case is slightly under one month and is therefore, found not to be inordinate.

13. The delay is blamed on the court which delivered the judgment without giving notice to the applicant or his counsel. He became aware of the judgment a month later when his son visited the court registry. The respondent on the other hand argued that parties were notified of the date of judgment by the court registry. That in any case, the applicant knew he had filed an appeal, but failed to follow it up and attend court for judgment and had only himself to blame. In my view the reason for the delay is excusable in the circumstances of this case since he made an effort to visit the registry and inquire about his case.
14. Having found that the delay is not inordinate and the reason therefor is excusable, this application nonetheless, fails for reasons: first, that the applicant did not annex a draft memorandum of appeal and cannot therefore, demonstrate that the intended appeal is arguable, or that it raises triable issues with high chances of success.
15. Secondly, that this being a succession dispute, the applicant did not have an automatic right of appeal to the Court of Appeal and there is no indication that he sought the requisite leave to appeal, nor is it included as a prayer in this application.
16. The third reason why this application must fail is that the firm of M/s Yegon and Mungai Advocates came on record for the applicant after judgment had been entered. Order 9 Rule 9 of the *Civil Procedure Rules* prohibits an advocate from coming on record after judgment has been entered, without an order of the court. The rule stipulates that changing advocates, or electing to act in person after judgment has been passed must be done with the approval of the court, either through an order of the court, or with the consent of the parties. There is no evidence on record of such court order or consent.
17. Reasons wherefore the application dated 14th April, 2025 is found to lack merit and is dismissed in its entirety. The applicant shall bear the costs of this application.
18. It is so ordered.

DATED AND DELIVERED AT NAKURU THIS 4TH DAY OF JULY, 2025.

L. ACHODE

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JUDGE OF APPEAL



I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

