



Wanyonyi & another v County Government of Bungoma & 4 others (Civil Application E011 of 2025) [2025] KECA 1451 (KLR) (1 August 2025) (Ruling)

Neutral citation: [2025] KECA 1451 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT KISUMU
CIVIL APPLICATION E011 OF 2025
LK KIMARU, JA
AUGUST 1, 2025**

BETWEEN

ASHON SIKOLIA WANYONYI 1ST APPLICANT

LUKA MAKOKHA WANYONYI 2ND APPLICANT

AND

THE COUNTY GOVERNMENT OF BUNGOMA 1ST RESPONDENT

COUNTY LAND REGISTRAR BUNGOMA COUNTY 2ND RESPONDENT

THE NATIONAL LAND COMMISSION 3RD RESPONDENT

THE PERMANENT SECRETARY MINISTRY OF LAND 4TH RESPONDENT

HON ATTORNEY GENERAL 5TH RESPONDENT

(Being an application for extension of time within which to lodge an appeal from the judgment/Ruling of the Environment and Land Court of Kenya at Bungoma (E.C. Cheronu, J) dated 10th July, 2024 in ELC No. 105 of 2016)

RULING

1. The applicants herein have moved this Court essentially under Rule 4 of the Court of Appeal Rules seeking the following orders:

- “1. That time within which to file and serve the record of appeal and memorandum of appeal be extended and leave be and is hereby granted to lodge them out of time.
- 2. That costs incidental to this application do abide in the (sic) outcome of the intended appeal”



2. The grounds in support of the application are on the face thereof and the annexed affidavit of Ashon Sikolia Wanyonyi, the 1st applicant. The applicants state that upon the delivery of the decision by the Environment and Land Court (ELC) Bungoma, they duly filed and served the Notice of Appeal upon the respondents' counsel on 24th and 26th July, 2024 respectively. However, they were unable to obtain the certified copies of the proceedings and the decision of the ELC to enable them lodge the Record of Appeal in time. The applicants plead with the Court to give them the chance to ventilate their appeal which relates to ownership of land under African Customary Law. The applicants aver that the delay in the preparation and certification of the proceedings and the decision of the ELC is attributed to the challenges faced by workload at the court and not the applicants. In the circumstances, the applicants plead with the Court to allow their application as, in their view, it is meritorious.
3. The application is unopposed. Although the respondents were served with the hearing notice, they did not file any pleadings in opposition to the application. Neither did they file written submissions.
4. Rule 4 of this Court's Rules grants this Court unfettered discretion whether to grant or not grant extension of time for any steps to be taken outside the period prescribed by the Rules. The discretion is however exercised judicially. Among the considerations this Court takes into account are: the reasons for the delay, the length of delay, if any prejudice will accrue to the respondent, the strength or otherwise of the intended appeal and whether allowing the application for extension of time will be in the interest of justice (see Samuel Onango Ogolla v. BOG ST. Francis of Assisi Nyanga Secondary School [2025] KECA (eKLR)).
5. In the present application, it was clear to the Court that the applicants gave sufficient explanation for the delay in filing and serving the record of appeal in time. The delay was caused by the workload at the court which lead to the typing and certification of the proceedings taking longer than the sixty (60) days required for the same to be availed to the applicants enable them lodge the record of appeal in Court. The applicants cannot, in the circumstances, be blamed for such delay.
6. It is unfortunate that the applicants did not copy the letter bespeaking of the certified typed copies of the proceedings and judgement to the respondents under Rule 84(2) of the Court of Appeal Rules. If they had done so, it would have obviated the necessity of filing the present application. The time it took them to lodge the present application is not inordinate. This court has not discerned any prejudice that may accrue to the respondents if the application is granted. As stated earlier in this Ruling, the application is unopposed.
7. In the premises therefore, the application is hereby allowed. The applicants are granted extension of time and leave to lodge the appeal out of time. They shall do so within fourteen (14) days and serve the same within the same period. There shall be no orders as to costs.

DATED AND DELIVERED AT KISUMU THIS 1ST DAY OF AUGUST, 2025.

L. KIMARU

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JUDGE OF APPEAL

I certify that this is a true copy of original.

Signed

DEPUTY REGISTRAR.

