



REPUBLIC OF KENYA



KENYA LAW
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**Mungoni v Nambiro & another (Civil Application E116 of 2025)
[2025] KECA 2059 (KLR) (1 December 2025) (Ruling)**

Neutral citation: [2025] KECA 2059 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT KISUMU
CIVIL APPLICATION E116 OF 2025
LK KIMARU, JA
DECEMBER 1, 2025**

BETWEEN

SOLOMON WATIWA MUNGONI APPLICANT

AND

ANNE NAMBIRO 1ST RESPONDENT

PATRICK MUBATSI NAMBIRO 2ND RESPONDENT

*(Being an application for extension of time to appeal out of time from the
Judgment of the Environment and Land Court of Kenya at Kakamega
(D.O. Ohungo, J) Dated 29th May, 2025 in ELC No. 314 of 2014)*

RULING

1. The applicant was aggrieved by the Judgment of the Environment and Land Court (ELC) delivered on 29th May, 2025 by D.O. Ohungo, J. He wishes to appeal against the said decision to this Court. He has filed an application essentially under Rule 4 of the Court of Appeal Rules seeking to be granted extension of time to lodge the notice of appeal and subsequently thereafter the record of appeal out of time. The applicant has given the reason for the delay in lodging the notice of appeal in time to the advice he received at the time from his former advocate that he did not have good grounds of appeal. On further reflection and consulting another advocate, he decided to appeal against the decision.
2. By the time he made the decision, the time he was supposed to lodge the notice of appeal had lapsed. He filed the present application on 31st July, 2025. He expressed his desire to pursue the appeal, which in his view, is arguable and raises substantial questions of law. The applicant reiterates that he would suffer substantial loss and damage if the application is not granted. He insisted that the respondent would not suffer any prejudice, and in any event, he would suitably be compensated by an award of costs. The application is supported by the annexed affidavit of the applicant.



- 3. The application is opposed. The 1st respondent Patrick Mambiro Mubatsi, swore a replying affidavit in opposition to the application. The respondents were not convinced by the reasons put forward by the applicant for the delay in lodging the appeal in time. He pointed out that the applicant knew of the contents of the judgment before the expiry of the period that he was required to lodge the notice of appeal. The respondent was of the view that the delay in filing the present application was inordinate. The applicant is not deserving of the exercise of discretion by this Court. The respondent reiterated that the appeal had no chance of success. He urged the Court to dismiss the application.

- 4. This Court has carefully considered the application and the replying affidavit filed in opposition thereto. The Court has also perused the written submissions filed by counsel for the applicant and the respondents. Both appreciate that in considering this application, this Court is exercising judicial discretion in the discharge of its jurisdiction under Rule 4 of the Court of Appeal Rules. In *Kimeto v. Chepkwony & others* [2025] KECA 835 (KLR), this Court held thus:

“...However, like all judicial discretions, the Court has to exercise the same discretion upon reasons and not upon whims of the Court. To guide the court on whether to consider, when exercising the same discretion, the case law has established certain considerations that the Court would look into. These are the period of delay; Secondly, the reason for the delay; thirdly (possible) whether the proceedings for which time is sought to be extended is frivolous; and fourthly, whether the respondent in those proceedings will be unduly prejudiced if the application were to be granted.”

- 5. In the present application, the applicant has given reasons for the delay in lodging the notice of appeal in time that has persuaded the Court. It took a period of about two months for the applicant to obtain legal advice as to the viability of the intended appeal. Upon making the decision, he immediately lodged the present application. The period of delay was two months. That period, in the considered opinion of this Court is not inordinate. It is evident that the applicant is desirous of exercising his right of appeal to this Court. This Court sees no reason to deny him that opportunity. Any prejudice that the respondent will suffer will be compensated by an award of costs.

- 6. In the premises therefore, the application has merit and it is hereby allowed. The applicant is granted extension of time to lodge the notice of appeal out of time. The same shall be filed and served within fourteen (14) days. The record of appeal shall be filed and served within forty-five (45) days of today’s date. The respondents shall have the costs of the application.

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

L. KIMARU

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JUDGE OF APPEAL

I certify that this is a true copy of original.

Signed

DEPUTY REGISTRAR.

