



**Kibuku v Kibuku (Sued as the administrator of the Estate of Daniel Kibuku Kamonye alias Daniel Kifuku Kamonye alias Kifuku alias kifuku Kamonye) (Civil Appeal (Application) E075 of 2024) [2026] KECA 7 (KLR) (16 January 2026) (Ruling)**

Neutral citation: [2026] KECA 7 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAKURU  
CIVIL APPEAL (APPLICATION) E075 OF 2024  
MA WARSAME, JA  
JANUARY 16, 2026**

**BETWEEN**

**JOSEPH KAMAU KIBUKU ..... APPLICANT**

**AND**

**JECINTAH WAIRIMU KIBUKU (SUED AS THE ADMINISTRATOR OF THE ESTATE OF DANIEL KIBUKU KAMONYE ALIAS DANIEL KIFUKU KAMONYE ALIAS KIFUKU ALIAS KIFUKU KAMONYE) ..... RESPONDENT**

*(Being an application for leave and the extension of time to file a notice of appeal out of time from the ruling of the Environment and Land Court of Kenya at Nakuru (M. A. Odeny, J.) delivered on 30th June 2025 in ELC Case No E060 of 2024)*

**RULING**

1. Before me is an application dated 4<sup>th</sup> July 2025 seeking orders that the notice of appeal dated 4<sup>th</sup> July 2025 and filed on 15<sup>th</sup> July 2025 be deemed as properly filed, or in the alternative, that the applicant be granted leave to file and serve a fresh notice of appeal out of time against the ruling of Justice (D.R) M.A. Odeny delivered on 30<sup>th</sup> June 2025 in Nakuru E.L.C No E060 of 2024.
2. The grounds as stated on the face of the application and the affidavit of Joseph Kamau Kibuku sworn on 18<sup>th</sup> July 2025 are that by a ruling delivered on 30<sup>th</sup> June 2025, the trial court dismissed the applicant's suit with costs to the respondent. The applicant instructed his advocates on record to appeal against the said ruling. A notice of appeal dated 4<sup>th</sup> July 2025 was dully drawn, but efforts to file it through the e-filing portal became a challenge as the judiciary e-filing system was down from late 4<sup>th</sup> July 2025 across the country, and payments could not be processed. The applicant avers that the system downtime was officially acknowledged by the judiciary ICT team on 11<sup>th</sup> July 2025 through a notice



that circulated countrywide. The applicant was eventually able to file the notice on 15<sup>th</sup> July 2025, and the same was served upon the respondent immediately.

3. The respondent did not file any response to this application.
4. Rule 77(2) of the Court of Appeal Rules, 2022 mandates that a notice of appeal be filed within 14 days from the date of the decision appealed against. In the instant case, the notice ought to have been filed by 14<sup>th</sup> July 2025. The notice was actually filed on 15<sup>th</sup> July 2025, resulting in a delay of one day.
5. I have considered the application and the supporting affidavit.  
  
Rule 4 of the Court of Appeal Rules grants this Court unfettered discretion to extend time, which discretion must be exercised judiciously. In considering such an application, the Court examines the length of the delay, the reasons for the delay, the chances of the intended appeal succeeding, and the degree of prejudice to the respondent. (See *Njeri Njoroge vs Joseph Maina Gichuhi & Another* [2018] eKLR)
6. The delay in this matter is minimal; a single day. More significantly, the reason for the delay was entirely beyond the applicant's control. The judiciary's e-filing system experienced a documented outage that prevented the timely filing of the notice. This was not a case of neglect or inaction by the applicant or his advocates. Rather, the applicant drew the notice on 4<sup>th</sup> July 2025, well within the prescribed period, and attempted to file it immediately. The filing was only accomplished when the system was restored.
7. The judiciary itself acknowledged the system failure on 11<sup>th</sup> July 2025 and made provisions for affected litigants. The applicant acted promptly once the system was restored and served the respondent immediately upon filing.
8. In the circumstances, I am satisfied that the delay is neither inordinate nor attributable to any fault on the part of the applicant. Consequently, I allow the application and order that the applicant file a notice of appeal within 14 days of this ruling.
9. No order as to costs.

**DATED AND DELIVERED AT NAKURU THIS 16<sup>TH</sup> DAY OF JANUARY, 2026.**

**M. WARSAME**

.....

**JUDGE OF APPEAL**

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

Signed

**DEPUTY REGISTRAR**

