



**Kanja & 4 others v M'kanake (Environment and Land Miscellaneous Application
E001 of 2023) [2025] KEELC 1382 (KLR) (17 March 2025) (Ruling)**

Neutral citation: [2025] KEELC 1382 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E001 OF 2023
BM EBOSO, J
MARCH 17, 2025**

BETWEEN

**REGINA KANJA 1ST APPLICANT
JOSEPH KIREMA 2ND APPLICANT
JOHN MUROKI 3RD APPLICANT
ELIZABETH KAGENDO 4TH APPLICANT
CHARLES MUTETHIA 5TH APPLICANT**

AND

JOYCE NCORORO M'KANAKE RESPONDENT

RULING

1. Falling for determination in this ruling is the notice of motion dated 30/8/2023. It was jointly brought by the above named five (5) applicants. It seeks: (i) an order enlarging the limitation period for filing an appeal against the Judgment rendered on 20/4/2023 in Maua CMC Civil Case No. 184 of 2024; and (ii) an order staying execution of the above Judgment pending the hearing and disposal of the intended appeal. The application was initially filed in the High Court. Through a ruling dated 5/10/2023, the High Court (Cherere J) transferred the Miscellaneous Application to this Court.
2. On 1/2/2024, this Court (Yano J) dismissed the application for non-attendance on part of the applicants. The applicants subsequently brought a notice of motion dated 26/2/2024 seeking a reinstatement of what they described as an "appeal". Vide a ruling dated 5/12/2024, this Court [Yano J] reinstated the application dated 30/8/2024.
3. The application was premised on the grounds set out in the motion and in the supporting affidavit sworn on 30/8/2023 by Charles Mutethia. It was canvassed through brief oral submissions tendered in the virtual court on 17/2/2025.



4. The case of the applicants is that they are aggrieved by the Judgment of the lower court and they wish to lodge an appeal against the said Judgment. The limitation period for lodging the appeal lapsed in May 2023. They contend that they were unable to lodge an appeal within the stipulated period of 30 days because they applied for copies of the impugned Judgment and court proceedings on 15/5/2023 and 29/5/2023 respectively but the said documents were not availed to them until 20/6/2023 and 4/7/2023 respectively. It is their case that they could not lodge an appeal without the two documents.
5. The respondent opposed the application through her replying affidavit dated 11/9/2023 and brief oral submissions tendered in the virtual court. Her case is that the application is unmerited. She observes that the request for a certified copy of the Judgment was lodged five (5) days before expiry of the limitation period of 30 days, adding that even after the applicant was supplied with the Judgment they stayed for four (4) months without bothering to bring an application for enlargement of time. The respondent adds that upon being supplied with certified copies of the proceedings, the applicants stayed for two (2) months without bothering to initiate the application for enlargement of time. The respondent contends that the applicants have failed to explain the delay.
6. The respondent adds that the applicants have a record of non-compliance with the directions of the court, contending that the impugned Judgment was procured ex-parte because the applicants neglected to pay throw-away costs which had been awarded as a condition for setting aside proceedings relating to an ex-parte hearing that had been conducted on a day when the applicants failed to attend the hearing. The respondent further contends that the applicants have failed to demonstrate that they have an arguable appeal. Lastly, the respondent argues that the applicants have failed to satisfy the principle of granting an order of stay pending appeal. She urges the court to reject the application.
7. The court has considered the application, the response to the application, and the parties' respective submissions. The following are the two key issues that fall for determination in the application: (i) Whether the application meets the criteria for enlargement of time; and (ii) Whether the application satisfies the criteria for granting an order of stay of execution pending the hearing and disposal of an appeal. I will be brief in my analysis.
8. Does the application meet the criteria for enlargement of time? First, both Section 16A of the [Environment and Land Court Act](#) and Section 79G of the [Civil Procedure Act](#) vest in this court discretionary jurisdiction to enlarge the limitation period relating to appeals to this court. Secondly, the general guiding principles on the question of enlargement of time were outlined by the Supreme Court of Kenya in [Nicholas Kiptoo Arap Salat Vs Independent Electoral and Boundaries Commission & 7 others](#) as follows:
 1. Extension of time is not a right of a party. It is an equitable remedy that is only available to a deserving party at the discretion of the Court.
 2. A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the court.
 3. Whether the court should exercise the discretion to extend time, is a consideration to be made on a case to case basis.
 4. Whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the Court.
 5. Whether there will be any prejudice suffered by the respondents if the extension is granted;



6. Whether the application has been brought without undue delay; and
7. Whether in certain cases, like election petitions, public interest should be a consideration for extending time.
9. The limitation period for lodging an appeal to this court against a judgment of a magistrate court is 30 days. Suffices it to state that Parliament had good reasons for legislating a limitation period of 30 days. One clear rationale is that there is need for clarity on the rights and obligations of litigants once a judgment has been rendered.
10. The impugned Judgment was rendered on 20/4/2023. The last day for lodging an appeal was 22/5/2023 because the 30th day was on a weekend. The applicants did not lodge an appeal within the prescribed limitation period. The reason advanced to explain the delay is that they were not supplied with copies of the Judgment and the typed proceedings within the limitation period.
11. A perusal of the exhibited documents reveals that the applicants presented their request for a copy of the Judgment on 15/5/2023. This was five days before the expiry of the 30 days limitation period. Secondly, it does emerge from the exhibited documents that the applicants did not bother to present their request for typed proceedings within the 30 days limitation period. They presented their application for typed proceedings on 29/6/2023. This was about 69 days after delivery of the impugned Judgment and 39 days after the lapse of the 30 days limitation period. If indeed the proceedings were necessary for the purpose of lodging an appeal, one would expect the applicants to promptly apply for and present their application for proceedings. This is not what happened. The inordinate delay in applying for the proceedings has not been explained.
12. It does also emerge from the exhibited evidence that even after receiving the Judgment and the proceedings on 20/6/2023 and 4/7/2023 respectively, the applicants did not bother to promptly bring the application for enlargement of time. The application was brought on 31/8/2023. This was a period of 71 days from the date they received a copy of the Judgment and 57 days from the day they received the proceedings. The delays happened in a context where Parliament has legislated a limitation period of 30 days from the date of delivery of judgment. No explanation has been tendered to justify the above delay that happened after the applicants had been given the documents which they allege were the cause of the delay. That is not all.
13. It does emerge from the materials presented to the court that after the applicants failed to attend the hearing and an *ex parte* hearing of the case was conducted, at the stage of submissions, parties entered into the following consent which the applicants did not bother to honour:

“By consent, the *ex parte* proceedings of 3/6/2021 be set aside. The defendants to pay Kshs. 15,000 being throw-away costs within 7 days. Parties to comply within 14 days and matter be set for hearing.”
14. The applicants neither paid the throw-away costs nor filed their pre-trial documents. The trial court proceeded to take submissions whereafter it rendered Judgment in the matter.
15. It is clear from the foregoing that the inordinate delay has not been explained. Secondly, the conduct of the applicants has not been satisfactory. For the above reasons, the court finds that the application dated 30/8/2023 does not meet the criteria for enlargement of time.
16. In the absence of an enlargement order, there is no basis for an order of stay of execution pending the hearing and disposal of the intended appeal.



17. In the end, the application dated 30/8/2023 is rejected and dismissed for lack of merit. In tandem with the principle in Section 27 of the *Civil Procedure Act*, the applicants shall bear costs of the application.

DATED, SIGNED AND DELIVERED AT MERU THIS 17TH DAY OF MARCH 2025

B M EBOSO[MR]

JUDGE

In the Presence of

Ms Kembo for the applicants

Mr. Tupet – Court Assistant

