



Mumo v Kosencha & another (Environment and Land Miscellaneous Application E013 of 2024) [2025] KEELC 3540 (KLR) (30 April 2025) (Ruling)

Neutral citation: [2025] KEELC 3540 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAROK
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E013 OF 2024
LN GACHERU, J
APRIL 30, 2025**

BETWEEN

DAVID MUTUTO MUMO APPLICANT

AND

MOSES KOSENCHA 1ST RESPONDENT

**DISTRICT LAND REGISTRAR NAROK NORTH DISTRICT ... 2ND
RESPONDENT**

RULING

1. The Applicant herein David Mututo Mumo has sought for orders against the Respondents being; -
 - a. That court be pleased to grant the applicant leave to appeal out of time against the judgment of Hon. W. Juma (C.M) dated 27th February, 2019 and decree issued on 5th July 2019 in the Chief Magistrates Court at Narok Civil Case No. 90 of 2018. Moses Kosencha vs Nareiyon Olorgeso & District Land Registrar Narok North.
 - b. The costs of this application be provided for.
2. The application is premised on the following grounds; The applicant purchased the suit property Cis-Mara/Olkinyei/793, from Nareiyon Olorgeso, who is now deceased on 20th November 2013, and the applicant was issued with a title deed by the District Land Registrar, and registered as a proprietor of the said suit property; thereafter the 1st Respondent filed a suit at Nakuru being ELC No. 606 of 2013, being; Moses Kosencho vs Nareiyon Olorgeso & District Land Registrar, Narok North, which suit was later transferred to Narok Law Courts as Narok MC ELC No. 90 of 2018; Even though the green card indicated that the applicant was the registered owner of the suit land, the 1st Respondent deliberately failed to include him as a Defendant in the case:



3. Further, that vide a judgement delivered on 27th February 2019, in Narok MCELC No.90 of 2018, the court found for the Plaintiff thereon, and directed that the title to the suit land be restored to the Plaintiff, and therefore, the Applicant's title was cancelled.
4. Further that at the time of the Judgment, Nareiyon Ologeso, the 1st Defendant was deceased, and there was no substitution, and no letters of administration had been taken on behalf of his estate; the applicant has tried to seek courts audience vide an application in Narok MC ELC No. 90 of 2018, and other suits to no avail.
5. Therefore, the applicant seeks to challenge the judgment of the trial court and decree thereon, which cancelled his proprietorship, though the time for filing the Appeal has lapsed, and hence this application.
6. The instant Application is also supported by the Supporting Affidavit of the Applicant herein, which reiterated the contents of the grounds in support of the application. The Applicant also averred that it is only fair and in the interest of justice and equity that the application herein should be allowed and the orders sought granted.
7. The application is opposed by the 1st Respondent Moses Kosencha vide his Replying Affidavit dated 24th January 2025, wherein he admitted that he was the Plaintiff in Narok MCL&E 190 of 2018; wherein he sued Nareiyon Ologeso, and the District Land Registrar, Narok. He also alleged that Nareiyon Ologeso had fraudulently acquired the title to the suit land Cis-Mara/Olkinyei/793, by the deceptive use of two forged grants of Letters of Administration allegedly issued by the High Court in Nakuru. Further that using the forged and the fraudulent grants and the court order, the Land Registrar had connivingly relied on to issue a title deed to the said Nareiyon Ologeso for Cis-Mara/Olkinyei/793.
8. He further averred that the court on 27th February 2019, delivered a judgment and allowed his claim wherein the title deed in favour of Nareiyon Ologeso was cancelled.
9. It was his contention that if Nareiyon Ologeso is deceased, then she can only be represented by her duly appointed Legal Representative/s and not the applicant herein. Further that his advocate has advised him that any appeal against the said judgment will have to include Nareiyon Ologeso, who is a central party to the main suit, and the said Appeal cannot take off without her legal representative, if she is indeed deceased as alleged by the applicant.
10. The 1st Respondent also contended that he sold the suit land in 2023, to a third party, and he is no longer the registered proprietor thereof, and that the applicant has vexed him in so many different forums over the same issue and he seeks to vex him once more through the intended Appeal. The 1st Respondent urged the court to dismiss the instant application.
11. The applicant filed a further affidavit and reiterated that he indeed bought the suit land from Nareiyon Ologeso, and it is proper that he be sued together with the said Nareiyon Ologeso, and the Land Registrar. Further that whether the title was acquired fraudulently by Nareiyon Ologeso, the fact that he was issued a title deed by the Land Registrar, then he was entitled to participate in the suit. Further that though the 1st Respondent alluded to the fact that he sold the suit land in 2023, there was no evidence to that effect.
12. Further, that his advocate has advised him that the right to be heard is a valued right, and it would offend the right to natural justice if he is not allowed to be heard. It was his further contention that failure to allow the application would amount to contravention of his right to fair hearing as provided by Article 50(1) of *the Constitution*, as he will be condemned unheard. He further contended that he



has a right to be heard on the matter, so that he can explain how he got registered as a proprietor of the suit land. Further that his advocate has also advised him that the court has inherent jurisdiction to allow him to appeal the Judgment and decree out of time, as the said judgment has affected his right to property, and right to be heard. The applicant urged the court to allow his application.

13. The application was canvassed by way of written submissions. The Applicant filed his written submission dated 14th February 2025, through Ayieko Kangethe & Co. Advocates, and urged the court to allow the instant application. He relied on the two cases. Alliance Bank Ltd (in liquidation) vs Southern Credit Ltd [2007]eKLR and Merry Beach Ltd vs Attorney General & 18 others [2018]eKLR.
14. He also set out the issue for determination being whether the applicant has met the legal test to warrant the grant of an order for leave to appeal out of time.
15. The 1st Respondent also filed his written submissions dated 17th March, 2025 through Ndungu Githuka & Co. Advocates, and urged the court to dismiss the instant application. He relied on the case of Nicholas Kiptoo Arap Korir Salat vs IEBC & 7 others [2014]eKLR, where the Supreme Court set out the principles that govern the exercise of discretion for extension of time to file an Appeal out of time.
16. The court has carefully considered the instant application, the grounds in support and against the said application, the relevant provisions of law, the rival written submissions, the cited authorities and find as follows; -
17. There is no doubt that the application herein is brought under Sections 79G and 95 of the [Civil Procedure Act](#) Cap 21 Laws of Kenya. The judgement that is sought to be appealed against was delivered on 27th February 2019, and the decree was issued on 5th July, 2018. The instant application was filed in the year 2024, which is approximately 5 years after the judgement.
18. Courts have severally held that there is no clear definition of what amounts to delay. In the case of in Utalii Transport Company Limited & 3 others vs. NIC Bank Limited & another [2014] eKLR, the court held as follows;

“Whereas there is no precise measure of what amounts to inordinate delay. And whereas what amounts to inordinate delay will differ from case to case depending on the circumstances of each case; the subject matter of the case; the nature of the case; the explanation given for the delay; and so on and so forth. Nevertheless, inordinate delay should not be difficult to ascertain once it occurs; the litmus test being that it should be an amount of delay which leads the Court to an inescapable conclusion that it is inordinate and therefore, inexcusable. On applying Court’s mind on the delay, caution is advised for Courts not to take the word ‘inordinate’ in its dictionary meaning, but in the sense of excessive as compared to normality.”

19. Bearing the above in mind, the court finds the issues for determination is whether this court should exercise its discretion and grant the applicant leave to file the Appeal out of time.

Section 79G of the [Civil Procedure Act](#) provides

“Every appeal from a subordinate court to the High Court shall be filed within a period of thirty days from the date of the decree or order appealed against, excluding from such period any time which the lower court may certify as having been requisite for the preparation and delivery to the appellant of a copy of the decree or order:



Provided that an appeal may be admitted out of time if the appellant satisfies the court that he had good and sufficient cause for not filing the appeal in time.”

20. The proviso to the above section of law is very clear that an appeal may be admitted out of time if the appellant satisfies the court that he had good and sufficient cause for not filing the Appeal on time. From the above provisions of Section 79G of the *Civil Procedure Act*, it is clear that before a court considers extension of time, the applicant must satisfy the court that there are good and sufficient reasons or cause for failure to file the appeal on time.
21. The Supreme Court of Kenya in the case of Nicholas Kiptoo Korir Arap Salat vs IEBC & 7 others [2014]eKLR, set out these principles that are applicable in an application for leave to file an appeal out of time as follows; -
 - i. Extension of time is not a right of a party. It was an equitable remedy that was only available to a deserving party at the discretion of the court;
 - ii. A party who sought extension of time had the burden of laying a basis for it to the satisfaction of the court;
 - iii. Whether the court ought to exercise the discretion to extend time, was a consideration to be made on a case to case basis;
 - iv. Whether there was a reasonable reason for the delay, which ought to be explained to the satisfaction of the court;
 - v. Whether there would be any prejudice suffered by the respondents if the extension was granted;
 - vi. Whether the application had been brought without undue delay; and;
 - vii. Whether in certain cases, like election petitions, public interest ought to be a consideration for extending time.
22. Further in the case of Paul Musili Wambua vs Attorney General & 2 others [2015]eKLR, the Court of Appeal while considering an application for extension of time and leave to file the Notice of Appeal out of time stated as follows; -

“ Extension of time to appeal out of time is within the discretion of the court after taking into account the length of the delay, the reason for the delay, chances of the appeal succeeding and the degree of prejudice to the respondent if the application is granted.
23. While applying the above principles herein it is clear that the judgment that is sought to be appealed against was delivered on 27th February 2019, and the decree was issued on 5th July 2019. The instant application was filed on 26th November 2024, which is approximately 5 years after the Judgement was delivered. The delay is for more than 5 years, as an appeal is supposed to be filed within a period of 30 days from the date of the judgement.
24. The applicant herein has attributed his delay in filing the appeal to the fact that he tried to seek the court’s attention through various forums to no avail and he enumerated the various forums that he sought to be heard.
25. In his own Affidavit, the applicant confirmed to having filed an application dated 21st April, 2021 in Narok MC ELC No. 90 of 2018, for joinder as an interested party, which application was disallowed by the trial court. He had earlier on filed MC ELC 115 OF 2019, wherein he sought for cancellation of Entry No.12 in the Green card of the suit land Cis-Mara/Olkinyei/793, which suit was dismissed



for want of Jurisdiction. After dismissal of the Application for joinder, he filed Narok ELC No. E008 of 2023, which was dismissed for being res-judicata.

26. It is apparent that the Applicant knew about the judgement of the trial court way back in 2019. He chose to file other suits in other foras, and has only resorted to filing this application after the other cases collapsed. It is clear that the instant application is an afterthought, or an alternative to the other litigations which did not succeed. The applicant is therefore second guessing through the instant application, as it was not his first choice of exercising his right. Courts have variously held that litigation must come to an end, and a party cannot be vexed so many times over the same issue.
27. It is evident that there is delay of over 5 years in filing the intended appeal. Are the reasons given herein for the said delay plausible? As the court stated earlier there is no clear definition of what amounts to delay. However, a court will definitely decline to allow an application for extension of time, where there is inordinate delay, without reasonable explanation.
28. The applicant has alleged that he failed to file the application on time, as he sought to exercise his rights to be heard through other means; that is vide an application for joinder, and several other suits, which were all dismissed. The applicant knew of the impugned judgement, but opted not to appeal against it, until all the other avenues were exhausted. Therefore, this court finds that no good reasons or sufficient cause has been given for failure to file the intended Appeal on time.
29. The court has considered the draft Intended Memorandum of Appeal, and has noted that the Judgment intended to be appealed against is for Narok CMC ELC No.90 of 2018; Moses Kosencha vs Nareiyon Ologeso & District Land Registrar Narok North. The suit mentioned above was between Moses Kosencha, the 1st Respondent and Nareiyon Ologeso & another. The Applicant herein was not a party to the said suit. However, the applicant had sought to be joined in the said suit as an interested party, vide application dated 21st August 2021, which application was disallowed by the trial court.
30. When the said application for joinder was dismissed, instead of filing an Appeal against the said dismissal of his application, he chose to file an application for leave to file appeal out of time for a matter where he is not a party. Can the intended appeal be said to raise pertinent issues of law?
31. It is evident that the applicant herein has not given good reasons for delay in filing the intended Appeal. The court has discretion to consider the reasons provided by the Applicant for the delay, and either grant the orders sought or not. It is evident from the holding of the Supreme Court in the case of Nicholas Kiptoo Korir Arap Salat vs IEBC(Supra) that extension of time is not a right, but is an equitable remedy available only to a deserving party, and that the court has discretion to extend time, and which discretion is considered on case by case basis.
32. In the instant case, the court finds that the applicant herein was not a party in the Judgement sought to be appealed against. Section 79 G provides that every party aggrieved by a judgement and decree of the court may appeal against such judgement and decree. However, a party who is aggrieved by such judgement and decree must demonstrate that he has a good and sufficient cause for not filing the appeal on time.
33. The Court of Appeal case of *Omar Shurie v Marian Rashe Yafar (Civil Application No. 107 OF 2020)* UR held 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.”

34. Having considered the circumstances of this case, and the case by case basis, this court finds that the applicant has not given sufficient reasons why he delayed for over 5 years before filing the instant application. Consequently, this court finds and holds that there is no good reason to allow the application herein as sought, and the court uses its discretion in disallowing the said application.
35. For the above reasons, the court finds and holds that the instant application is not merited, and therefore this application is dismissed entirely with costs to the 1st Respondent.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAROK THIS 30TH DAY APRIL, 2025.

L. GACHERU

JUDGE

30/4/2025

Delivered online in the presence of

Elijah Meyoki – Court Assistant

Mr. Ayieko for the Applicant

Mr. Githuka for the 1st Respondents

N/A for 2nd Respondents

