



**Kabbis v Odhiambo & another (Environment and Land Miscellaneous Application E009 of 2024) [2025] KEELC 3423 (KLR) (29 April 2025) (Ruling)**

Neutral citation: [2025] KEELC 3423 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT BUSIA  
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E009 OF 2024**

**BN OLAO, J**

**APRIL 29, 2025**

**BETWEEN**

**GEORGE WESONGA KABBIS ..... APPLICANT**

**AND**

**NOBERT ADUKHO ODHIAMBO ..... 1<sup>ST</sup> RESPONDENT**

**JOHN MANGENI ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. On 28<sup>th</sup> January 2022, Olengo P.A (Senior Principal Magistrate Busia) delivered a judgment in Busia CMC ELC Case No 68 of 2019 where George Wesonga Kabbis (the Applicant herein) was the Plaintiff while Nobert Adukho Odhiambo and John Mangeni (the 1<sup>st</sup> and 2<sup>nd</sup> Respondents respectively) were the Defendants. The Applicant is aggrieved by that judgment and has now moved to this Court vide his Notice of Motion dated 29<sup>th</sup> July 2024 seeking the following orders:

1. That leave be granted to the Applicant to file an appeal outside time.
2. That costs of this application be provided for.

The Motion is anchored under the provisions of Sections 1, 1A, 3, 3A, 79G and 63(e) of the *Civil Procedure Act*, and Order 51 Rules 1, 4, 6, 10(1) and (2) of the Civil Procedure Rules. The same is premised on the grounds set out therein and supported by the Applicant's affidavit dated 19<sup>th</sup> August 2024.

2. The gravamen of the application is that the Applicant's suit was dismissed by the trial Court vide a judgment delivered on 28<sup>th</sup> January 2019 without notice to him or his counsel. Thereafter, the case file was not available for long time necessitating the Applicant's counsel, MR ASHIOYA, to write to the Court Manager on 28<sup>th</sup> November 2023 and it was only after that letter that the Applicant and his counsel were notified that the judgment had infact been delivered on 28<sup>th</sup> January 2022. That the



Applicant's suit was dismissed even though it was not contested. The Applicant is aggrieved and wishes to appeal the judgment hence this application.

3. When the Motion came up for directions on 2<sup>nd</sup> April 2025, Mr Okeyo holding brief for Mr Ashioya for the Applicant informed the Court that the same was not opposed. I however directed that I would deliver my ruling on notice after perusing the proceedings in Busia CMC ELC Case No 68 of 2019. I was subsequently able to retrieve the said file for my perusal and I can now give a considered ruling.
4. Section 79G of the *Civil Procedure Act* provides as follows:

“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.” Emphasis mine.

Similarly, Section 16A (1) and (2) of the *Environment and Land Court Act* provides that:

1: “All appeals from subordinate Courts and local tribunals shall be filed within a period of thirty days from the date of the decree or order appealed against in matters in respect of disputes falling within the jurisdiction set out in Section 13(2) of the *Environment and Land Court act*, provided that in computing time within which the appeal is to be instituted, there shall be excluded such time that the subordinate Court or tribunal may certify as having been requisite for the preparation and delivery to the appellant of a copy of the decree or order.

2: An appeal may be admitted out of time if the appellant satisfies the Court that he had a good and sufficient cause for not filing the appeal in time.” Emphasis mine.

5. Finally, Section 95 of the *Civil Procedure Act* provides for the general power of the Court to enlarge time. It states:

95: “Where any period is fixed or granted by the Court for the doing of any act prescribed or allowed by this Act, the Court may, in its discretion, from time to time, enlarge such period, even though the period originally fixed or granted may have expired.” Emphasis mine.

The judgment sought to be appealed was delivered on 28<sup>th</sup> January 2022 and it is clear from the record that none of the parties was present. It is not clear to whom the judgment was delivered when neither the Appellant nor Respondent was present. That in itself would be a good reason to extend the time for filing an appeal out of time.

6. However, the record also shows that vide a letter dated 28<sup>th</sup> November 2023, the Applicant's counsel wrote to the Court Manager requesting to know when the judgment was delivered and vide a letter dated 7<sup>th</sup> December 2023, he was informed that the judgment was infact delivered on 28<sup>th</sup> January 2022 and “the file released to the registry.” Clearly, therefore, at least by 7<sup>th</sup> December 2023, the Applicants counsel had been made aware that the judgment sought to be appealed had been delivered on 28<sup>th</sup> January 2022 and the file was in the registry. Yet it took the Applicant upto 11<sup>th</sup> August 2024 (some 8 months) to file this application. That is a delay which is clearly inordinate and most importantly, no attempt has been made to explain it. Although the Respondent did not oppose the Motion, this Court is enjoined to consider it in line with the Established precedents and the law. This is because, extension of time is not a right. Rather, it is an equitable remedy available only to a deserving party.



7. In the case of *Nicholas Kiptoo Arap Korir Salat v I.E.B.C & Others* 2014 eKLR, the Supreme Court laid down the following principles to guide a Court while considering an application to extend time. Those principles are:
1. “Extension of time is not a right. 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 reason for the delay, it should be explained to the satisfaction of the Court.
  5. Whether there will be any prejudice suffered by the Respondent if the extension is granted.
  6. Whether the application has been brought without delay.
  7. Whether in certain cases like election petitions, public interest should be a consideration.”

It is also clear from the provisions of Section 79G of the *Civil Procedure Act* and Section 16(A)(2) of the *Environment and Land Court Act* that leave to appeal out of time will only be granted where the Applicant demonstrates that he has “good and sufficient cause for not filing the appeal in time.” As I have already stated above, the delay in not filing the appeal within thirty (30) days from 28<sup>th</sup> January 2022 has been explained by the fact that the judgment sought to be appealed was delivered in the absence of the Applicant and his counsel who only came to know that the same had already been delivered in their absence after they received the Court administrator’s letter dated 7<sup>th</sup> December 2023. The Applicant ought to have moved with haste the moment he and his counsel received the Court administrator’s letter dated 7<sup>th</sup> December 2023. They have not stated exactly when the said letter was received but it must have been received in the same month of December 2023 when it was written. If it was not, then the Applicant ought to have said so in his affidavit. The long and short of it all is that the Applicant did not have to wait until 11<sup>th</sup> August 2024, a delay of eight (8) months to file this application. That delay disentitles him to the orders which he seeks and which, as I have already stated above, has not been explained.

8. The up-shot of all the above is that the Notice of Motion dated 29<sup>th</sup> July 2024 and filed herein on 11<sup>th</sup> August 2024 is devoid of merit. It is dismissed with no orders as to costs.

**BOAZ N. OLAO**

**JUDGE**

**29TH APRIL 2025**

Ruling dated, signed and delivered by way of electronic mail on this 29<sup>th</sup> day of April 2025. The Deputy Registrar to arrange for service upon the Respondents who are in person.

**BOAZ N. OLAO**

**JUDGE**

**29TH APRIL 2025**

