



REPUBLIC OF KENYA



**KENYA LAW**  
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**Kinaiya & another (Suing as the Personal Representatives of Joseph  
Sein - Deceased) v Elesondai & 3 others (Environment and Land  
Appeal 19 of 2021) [2025] KEELC 3777 (KLR) (5 May 2025) (Ruling)**

Neutral citation: [2025] KEELC 3777 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO  
ENVIRONMENT AND LAND APPEAL 19 OF 2021  
LC KOMINGOI, J  
MAY 5, 2025**

**BETWEEN**

**GEOFFREY MEITARON KINAIYA ..... 1<sup>ST</sup> APPELLANT  
ALFRED NKOSHUMU KINAIYA ..... 2<sup>ND</sup> APPELLANT  
SUING AS THE PERSONAL REPRESENTATIVES OF JOSEPH SEIN -  
DECEASED**

**AND**

**IBRAHIM LEO ELESONDAI ..... 1<sup>ST</sup> RESPONDENT  
MARIASI OLE PAKINE TENKEYA ..... 2<sup>ND</sup> RESPONDENT  
JACOB MWANTO WANGORA ..... 3<sup>RD</sup> RESPONDENT  
FRONT BEACH AUCTIONEERS ..... 4<sup>TH</sup> RESPONDENT**

*(Being an appeal from the Ruling and Order of Hon. I.Kabuya (CM)  
delivered on 24th May 2021 in Kajiado CMELC No. 44 of 2018)*

**RULING**

1. This is the Ruling in respect of the Notice of Motion dated 31<sup>st</sup> May 2024 brought under Sections 1A, 1B and 3A of the *Civil Procedure Act*, (Cap. 21) Laws of Kenya, Order 12 Rule 7 and Order 51 Rule 1 of the Civil Procedure Rules, 2010.
2. It seeks orders:
  - a. Spent



- b. That this Honourable Court be pleased to set aside the order dismissing the appeal for want of prosecution on 18<sup>th</sup> April 2023 and readmit the Appeal for hearing on merit on account of the reasons provided herein.
  - c. That this Honourable Court be pleased to extend time for such period as the court may deem fit and proper for the Appellant to lodge and serve a record of appeal.
  - d. That costs of this application be costs in the cause.
3. The grounds are on the face of the application and are set out in paragraphs 1 to 5. The application is supported by the Affidavit of Alfred Nkoshumu Kinaiya, one of the Appellants, sworn on the 31<sup>st</sup> May 2020.
  4. The application is opposed. There is a Replying Affidavit sworn by the Respondents.
  5. On the 5<sup>th</sup> of November 2024, the Court directed that the Notice of Motion be canvassed by way of written submissions.
  6. The Appellants' submissions are dated 29<sup>th</sup> January 2025. Counsel submitted that the Appellants urged this Court to set aside the orders issued on 18<sup>th</sup> April 2023 to allow their plea to be heard on the merits. Reliance is placed on Order 12 rule 7 of the Civil Procedure Rules and the cases of Bernard Muthee & Another VS Anita Kamba Mwititi [2021] eKLR; J.G. Builders VS Plan International [2015] eKLR.
  7. It is also submitted that the Appellants have explained the cause of the delay and deserve to be given a chance in line with constitutional principles espoused under Article 50 and 159 of *the constitution*. Reliance is placed on the case of Pinpoint Solutions Ltd & Another VS Lucy Waithegeni Wanderi (as the legal administrator of James Nyanga Muchangi [2020] eKLR; Bernard M. Kisimu & another VS Morris Nzioka Kyongo & 2 others [2021] eKLR.
  8. It is also submitted that the Prayer for extension of time to file the Record of Appeal ought to be granted. He has put forward the case of Nicholas Kiptoo Arap Korir Salat VS IEBC & 7 others [2014] eKLR; Bernard M. Kisimu & another (Supra). That no prejudice will be suffered by the Respondents who are currently holding title to the suit property.
  9. It is further submitted that the Article 159 of *the constitution* gives this Hon. Court unfettered inherent powers especially where procedural technicalities pose an impediment to the administration of justice. He has put forward the case of Kenya Power & Lighting Company Ltd VS Benzene Holdings Ltd t/a Wyco Paints [2016] eKLR. He prays that the application be allowed with costs in the cause.
  10. The Respondents' submissions are dated 4<sup>th</sup> March 2025. Counsel submitted that the Appellants have been indolent. The impugned Judgement is 5 years old and the Respondents have a right to enjoy the fruits of the Judgement and to have some finality to a long-standing dispute. He has put forward the case of Nicholas Kiptoo Arap Korir Salat VS IEBC & 7 others [2014] eKLR.
  11. It is also submitted that the Appellants seek discretionary reliefs which are only available to a deserving party. He has put forward the case of William Koross (legal representative of Elijah C.A Koross) VS Hezekiah Kiptoo Komen & 4 others [2015] eKLR.
  12. He prays that the application be dismissed with costs as the Appellants are undeserving of this Court's discretion.



13. I have considered the Notice of Motion, the Affidavit in support, the Response thereto, the rival submissions, and the authorities cited. The issue for determination is whether this application is merited.
14. I have considered the principles laid down in the case of Nicholas Kiptoo Arap Korir (*supra*) and I am satisfied that the Appellants herein deserve the exercise of this Court's discretion. I find that the reason for the delay has been explained.
15. I reluctantly allow this application on the following terms;
  - a. That the order dismissing the appeal on 18<sup>th</sup> April 2023 is hereby set aside.
  - b. That the record of appeal be filed within twenty one (21) days from the date of this Ruling. In default, the appeal shall stand dismissed.
  - c. That costs of this application be borne by the Appellants.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 5<sup>TH</sup> DAY OF MAY 2025.**

**L.KOMINGOI**

**JUDGE**

In the presence of:

For the Appellants.

For the Respondents.

Court Assistant: Mutisya

