



Lombo v Chiro (Sued as Administrator of the Estate of Jacob Adero Obiero) (Environment and Land Miscellaneous Application E062 of 2024) [2025] KEELC 3992 (KLR) (8 May 2025) (Ruling)

Neutral citation: [2025] KEELC 3992 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISUMU
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E062 OF 2024**

**E ASATI, J
MAY 8, 2025**

BETWEEN

TOM EDWARD OUMA LOMBO APPLICANT

AND

**DICKSON ODINGO CHIRO (SUED AS ADMINISTRATOR OF THE ESTATE
OF JACOB ADERO OBIERO) RESPONDENT**

RULING

1. The Notice of Motion dated 9th December, 2024 expressed to be brought pursuant to the provisions of section 1A, 1B, 3A and 78G *Civil Procedure Act* Cap 21 Laws of Kenya, Order 51 Rule 1 *Civil Procedure Rules* and article 48 of the *Constitution* of Kenya seeks for an order that leave be granted to the Applicant to appeal out of time against the judgement and decree of the court dated 13th August, 2024.
2. The grounds upon which the application is brought are that Counsel for both parties had engaged in a healthy conversation with a view to settling and resolving the matter. That the failure to file the appeal within time was because the Advocates reasonably believed that the matter could be resolved without going through the appeal process.
3. That the Applicant has an arguable appeal hence should be afforded an opportunity to ventilate his right of appeal.
4. The application was opposed vide the contents of the Replying Affidavit sworn on 23rd January, 2023. The application was argued orally on 18th February, 2025.
5. It was submitted on behalf of the Applicant that Counsel thought that it was a matter that could be resolved amicably but that time to file appeal elapsed before amicable settlement could be reached. That the judgement of the trial court recognized that the Applicant bought land from the deceased when he was still alive.



6. On behalf of the Respondent, it was submitted that Counsel for the Applicant has no audience as he is not properly on record. That in the lower court case the Applicant was represented by the firm of Ben Aduol Nyanga Advocate and that the current Advocates have not filed any Notice of Change of Advocate in accordance with the provisions of Order 9 Rule 9 *Civil Procedure Rules*. That only a portion of the suit land was bought and the Applicant proceeded to have the entire land registered in his name. That efforts at amicable settlement failed. That the proposed appeal has no chances of success. That the Applicant chose not to appeal within the time stipulated by law. That allowing the application will be to waste of court's time further.
7. Counsel for the Applicant submitted that he was only arguing the application which was filed by the firm of Ben Aduol Nyanga Advocates who are on record for the Applicant. That the land should be sub-divided and the Applicant gets his share of the suit land. That the trial court did note that the Applicant has a claim.
8. I have considered the application, the replying Affidavit and submissions by Counsel.
9. In the cases of *Leo Sila Mutiso vs Rose Hellen Wangeci* Civil Appeal No 255 of 1997 and *First America Bank of Kenya Limited vs Gulab P. Shah & others* HCC No 2255 of 2000 to (2002) IEA 65 the courts held that the grounds to consider in an application for leave to file appeal out of time include:
 - i. the explanation, if any, for the delay,
 - ii. the merits of the contemplated action;
 - iii. whether the appeal is arguable.
 - iv. whether or not the Respondent can be adequately compensated in costs for any prejudice that may be suffered as a result of the exercise of discretion in favor of the applicant.
14. The explanation for the delay is that there was post judgement negotiations going on which the proposed Appellant hoped could end in amicable settlement hence did not lodge the Memorandum of Appeal within the time stipulated by law.
15. An appeal ought to have been lodged within 30 days from 13th August, 2024 when judgement was delivered. The application was filed on 17th December, 2024, a delay of about 3 months.
16. The existence of the post-judgement negotiation have not been denied by the Respondent. The Respondent's case is that no guarantee had been given that time for appeal could not run.
17. This court is empowered by the proviso to Section 79G of the *Civil Procedure Act* to enlarge time for filing appeal on such terms as are just.
18. Taking into account the explanation given for the delay, the court is satisfied that the appellant had good and sufficient cause for not filing the appeal in time. In addition, given the submission that the Applicant is willing to have the land sub-divided and that the court had noted that the Applicant had bought part of the suit land, the court finds it to be in the interest of justice to allow the Applicant exercise his right to appeal.
19. As to whether Counsel for the applicant had audience, the record shows that the application was filed by the firm of Ben Aduol Nyanga Advocates whom the Respondent acknowledges as the Advocates on record for the applicant.

The application is therefore hereby allowed in the following terms;

- i. The applicant is granted leave to file appeal out of time.



- ii. The Memorandum of Appeal be filed and served within 14 days hereof.
- iii. Costs of the application to the Respondent.
- iv. Mention on 2nd July 2015 to confirm filing of the appeal and for directions on the appeal.

Orders accordingly.

RULING, DATED AND SIGNED AT KISUMU, READ VIRTUALLY THIS 8TH DAY OF MAY, 2025 THROUGH MICROSOFT TEAMS ONLINE APPLICATION.

E. ASATI,

JUDGE.

In the presence of:

Maureen - Court Assistant.

Anyul for the Applicant

N/A for the Respondent.

