



Munandu v Kitavi & another (Environment & Land Miscellaneous Case E002 of 2022) [2025] KEELC 3601 (KLR) (8 May 2025) (Ruling)

Neutral citation: [2025] KEELC 3601 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MAKUENI
ENVIRONMENT & LAND MISCELLANEOUS CASE E002 OF 2022**

EO OBAGA, J

MAY 8, 2025

BETWEEN

JACKSON MAKALI MUNANDU APPLICANT

AND

DAVID MULE KITAVI 1ST RESPONDENT

PAUL MUSEMBI MWANIKI 2ND RESPONDENT

RULING

1. Before this court for determination is the Notice of Motion dated 15th January, 2025 brought under the provisions of Sections 1A, 1B, 3A and 95 of the [Civil Procedure Act](#) in addition to Orders 50 Rule 5 of the Civil Procedure Rules.
2. The Applicant seeks issuance of the following orders: -
 1. Spent
 2. Spent
3. That an order of enlargement of time be issued regarding the consent order made on 6/12/2022 pending the hearing and determination of the intended main appeal.
4. Costs of the application be provided for.
3. The application is premised on the grounds appearing on the face and the supporting affidavit sworn by Jackson Makali Munandu on even date. The Applicant averred that all the parties herein duly executed a consent dated 29/11/2022 through their respective advocates. That the said consent granted the Applicant leave to appeal out of time against the judgment dated 08/12/2021 delivered in Makueni MCELC NO. E012 of 2021.



4. The Applicant added that the said consent was adopted as an order of the court on 6/12/2022 and that by dint of the consent, he was supposed to file the memorandum of appeal within 30 days i.e. on or about 06/01/2023. He further contended that the 2nd Respondent filed an application dated 14/12/2022 seeking to set aside the consent order which caused a failure on the part of the Applicant to comply with the consent. That the 2nd Respondent's application was heard and dismissed with costs vide the ruling dated 18/12/2024.
5. The Applicant averred that no prejudice will be suffered by the Respondents if the application is allowed and that the same is made with a view to fast-tracking the intended appeal.
6. The Respondents did not file their respective replies to the application despite there being evidence of service.
7. The only issue for determination is whether the Applicant has demonstrated good and sufficient cause to warrant enlargement of the time of the order dated 6th December, 2022.
8. The power to enlarge such time that has been prescribed by this court for taking any action and complying with any directions is discretionary. Section 95 of the Civil Procedure Act outlines as follows:

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.

9. The considerations to be made when deciding upon such an application for enlargement of time were aptly set out by the Court of Appeal in the case of *Thuita Mwangi v Kenya Airways Ltd* [2003] eKLR as follows: -

“Over the years, the Court has, of course set out guidelines on what a single Judge should consider when dealing with an application for extension of time under rule 4 of the Rules. For instance in *Leo Sila Mutiso v Rose Hellen Wangari Mwangi*, (Civil Application No Nai 255 of 1997) (unreported), the Court expressed itself thus:

“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”.

10. The Applicant contended that his failure to comply with the order of 6th December, 2022 was on account of the 2nd Respondent's application dated 14th December, 2022 which sought to set aside the consent order. He further contended that the 2nd Respondent's application was heard and dismissed vide the ruling delivered on 18th December, 2024. The present application was made on 15th January, 2025 which is barely a month after the ruling of this court.
11. The length of delay on the part of the Applicant is not inordinate. The Applicant also annexed a copy of the memorandum of appeal dated 22nd December, 2022 outlining thirteen grounds of appeal against the judgment of the subordinate court dated 8th December, 2021.



12. Accordingly, the Applicant has sufficiently explained his reasons for non-compliance with this court's orders. He has also demonstrated his willingness and intention of appealing out of time by annexing the memorandum of appeal as Exhibit "JMM3".
13. Lastly, no prejudice was demonstrated by the Respondents if the orders sought are allowed as there was no opposition to the application. The Court in *George Kianda & another v Judith Katumbi Kathenge & another* [2018] eKLR aptly held as follows: -

“The Respondent has not stated that she cannot be adequately compensated in costs for any prejudice that she may suffer as a result of a favourable exercise of discretion in favour of the applicant. It has been said there is one panacea which heals every sore in litigation and that is costs. Seldom, if ever, do you come across an instance where a party has made a mistake which has put the other side to such advantage or that it cannot be cured by the application of that healing medicine. See *Waljee's (Uganda) Ltd v Ramji Punjabhai Bugerere Tea Estates Ltd* [1971] EA 188.”

14. Consequently, I allow the application by enlarging time for filing memorandum of appeal by 14 days. The Applicant shall have costs of this application.

It is so ordered.

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HON. E. O. OBAGA

JUDGE

RULING DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS THIS 8TH MAY, 2025.

In The Presence Of:

Mr. Mukula for Appellant/Applicant.

Court assistant – Steve Musyoki

