



REPUBLIC OF KENYA



KENYA LAW
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National Land Commission v Wanjohi & 2 others (Environment and Land Appeal E008 of 2025) [2025] KEELC 3685 (KLR) (8 May 2025) (Ruling)

Neutral citation: [2025] KEELC 3685 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT AND LAND APPEAL E008 OF 2025**

MD MWANGI, J

MAY 8, 2025

BETWEEN

THE NATIONAL LAND COMMISSION APPELLANT

AND

ENG ISAAC G WANJOHI 1ST RESPONDENT

KENYA RAILWAYS CORPORATION 2ND RESPONDENT

THE ATTORNEY GENERAL 3RD RESPONDENT

(Being an appeal against the entire judgment and orders by Honourable Tribunal Dr. Nabil M. Orina and George Supeyo delivered on 13th January 2025 at the Land Acquisition Tribunal at Nairobi)

RULING

(In respect of the notice of motion dated 17th February 2025 seeking extension of time and admission of the appeal out of time under the provisions of Sections 13 and 16A of the ELC Act, Section 79G of the Civil Procedure Act and Order 42 rule 6 of the Civil Procedure Rules)

Background

1. The application before me for determination is the notice of motion dated 27th February 2025 principally brought under the provisions of Sections 13 and 16A of the ELC Act and Section 79G of the Civil Procedure Act seeking extension of time and admission of the appeal herein which was filed outside the statutory timelines stipulated in the two statutes. In the memorandum of appeal dated 24th February 2025, the appellant, who is the National Land Commission states that the appeal is against the entire judgment of the Land Acquisition Tribunal delivered on 13th January 2025 in Tribunal Case Number TRLAP/E034/2024 (Eng. Isaac G. Wanjohi v The National Land Commission & 2 others).



2. The appellant/applicant avers that it filed its memorandum of appeal 11 days after the lapse of the 30 days' time period provided for the filing of appeals to this court. It states that the delay was caused by circumstances beyond its control.
3. It is explained on the grounds on the face of the application and in the supporting affidavit of Titus Koceyo that the advocates for the appellant received instructions to appeal on 11th February 2025 and they immediately filed their notice of appointment. They thereafter went ahead to request for typed proceedings and the judgment from the Registrar of the Tribunal through a letter dated 19th February 2025. Eventually, they lodged this appeal through the memorandum of appeal dated 24th February 2025.
4. The delay according to the appellant/applicant was occasioned by the delay on the part of the Tribunal in supplying the applicant with the proceedings. The applicant pleads that its appeal is not frivolous and raises substantial matters of law. Further that if the application is not allowed it stands to suffer substantial loss and damages. Its appeal is an arguable appeal with probability of success. Finally, the delay is not inordinate and was not deliberate.

Response by the respondents.

5. The 1st and 2nd respondents in-spite of service did not respond to the application. On his part, the 3rd respondent informed the court through its advocate who was present in court on the date of the hearing of the application that he was not opposed to the application.

Issues for determination.

6. The appellant/applicant informed the court that it was relying on the grounds on the face of the application and the averments in the supporting affidavit.
7. Having considered the application in its totality, the sole issue for determination is whether it is merited.

Analysis for determination.

8. Sections 16A of the ELC Act and 79G of the *Civil Procedure Act* stipulate that appeals from subordinate courts and local Tribunals shall be filed within a period of 30 days from the date of the decree or order appealed against. The sections however provide that 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.
9. The appellant's application before me is pegged on the above provisions. The appellant explains that the delay was caused by its inability to obtain the typed proceedings from the Tribunal in good time.
10. The guiding principles concerning extension of time are well settled. In the case of *Mombasa County Government v Kenya Ferry Services and another* [2019] eKLR, the Supreme Court of Kenya reiterated the principles it had set out earlier in the *Nick Salat Case* in the following words,

“...it is clear that the discretion to extend time is indeed unfettered. It is incumbent upon the applicant to explain the reasons for delay in making the application for extension and whether there are any extenuating circumstances that can enable the court to exercise its discretion in favour of the applicant.

We derive the following as the underlying principles that a court should consider in exercising such discretion.



- i. Extension of time is not a right of a party. It is an equitable remedy that is only available to a deserving party at the discretion of the court.
- ii. A party who seeks extension of time has the burden of laying a basis to the satisfaction of the court.
- iii. Whether the court should exercise the discretion to extend time, is a consideration to be made on a case by case basis.
- iv. Where there is a reasonable (cause) for the delay, (the same should be expressed) to the satisfaction of the court.
- v. Whether there will be any prejudice suffered by the respondents if extension is granted.
- vi. Whether the application has been brought without unreasonable delay; and
- vii. Whether in certain cases like election petitions, public interest should be a consideration for extending time.”

11. In this case, I appreciate that the application which was filed alongside the memorandum of appeal was brought without unreasonable delay; it was brought to court 11 days after the lapse of the 30 days’ period provided under the law. I am further satisfied by the explanation by the applicant.
12. The court further takes cognisance of the fact that the subject of the intended appeal involves from the public coffers for the compensation for compulsorily acquired land. The court’s view is that it is in public interest that the appeal be admitted out of time for hearing and consideration on its merits.
13. Consequently, the appellant’s application dated 27th February 2025 is hereby allowed. The appeal is admitted out of time.
14. The costs of the application shall be in the cause.

It is so ordered.

DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 8TH DAY OF MAY 2025.

M.D. MWANGI

JUDGE

In the virtual presence of:

Ms. Nyakundi h/b for Mr. Koceyo for the Appellant/Applicant

N/A by the Respondents

Court Assistant: Mpoeye

M.D. MWANGI

JUDGE

