



**Namu v Wandira (Environment and Land Miscellaneous Application
E002 of 2023) [2025] KEELC 5867 (KLR) (3 June 2025) (Ruling)**

Neutral citation: [2025] KEELC 5867 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT EMBU
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E002 OF 2023**

AK BOR, J

JUNE 3, 2025

BETWEEN

LABAN KINYUA NAMU APPLICANT

AND

PHILIP WAMWEA WANDIRA RESPONDENT

RULING

1. The applicant filed the application dated 9/8/2023 seeking leave to lodge an appeal out of time against the decision of Hon J.W Gichimu, Senior Principal Magistrate, delivered on 29/6/2023 in Runyenjes ELC Case No. 104 of 2015. The application was made on the grounds that the applicant filed suit on 4/12/2015 through the firm of Kijaru Njeru & Co. Advocates whom he had instructed but that the advocates failed to prosecute the case. He appointed Beth Ndorongo & Co. Advocates to act for him. The matter came up for hearing on 24/11/2020 but his advocates did not attend court, and since he was not aware of the hearing, he did not attend court as a result of which the suit was dismissed for want of prosecution on 24/11/2020.
2. Upon learning of the dismissal, the applicant engaged the firm of Joy Mbwiria & Co. Advocates, who filed the application dated 26/9/2022 seeking to reinstate the suit. The court dismissed the application on 29/6/2023. The applicant opted to act in person and withdrew instructions on 17/7/2023 and filed a notice to act in person. When filing the notice, he requested for the ruling from the court registry but they failed to assess his request. Being unfamiliar with court process, he sought help from Kituo Cha Sheria, who made a further request for the ruling on 27/7/2023. The ruling was finally provided to him on 1/8/2023.
3. The applicant explained that the delay in filing the appeal was due to the court's delay in supplying the ruling, but not due to any deliberate inaction on his part. He averred that his intended appeal was arguable with high chances of success, and that without the court's intervention, he risked being evicted and having his matrimonial and residential houses being demolished which would cause him



irreparable loss. He maintained the delay in bringing the instant application was not inordinate and that no prejudice would be occasioned to the respondent if the application were allowed.

4. The applicant swore the affidavit in support of the application and attached copies of the notice to act in person, the letter to the Chief Magistrates court in Runyenjes requesting for the ruling, an email forwarding the ruling to Kituo Cha Sheria on 1/8/2023, the ruling dated 29/6/2023 and a draft memorandum of appeal.
5. The respondent opposed the applicant's application vide the replying affidavit which he swore on 6/5/2024 and deponed that the Magistrate's Court rightly dismissed the applicant's suit for want of prosecution, because the suit lacked merit. He averred that the grounds presented by the applicant for the delay in filing the appeal were unsubstantiated and did not justify the appeal being filed out of time. Further, that the delay in filing the appeal stemmed from the applicant's lack of diligence and not any fault of the court or the registry. He argued that applicant's suit was bound to fail as the suit land was registered in the sister's name and that the applicant's claim for specific performance of a sale agreement could not stand since it was time barred and the contract was voidable for want of consent of the Land Control Board.
6. Further, that the applicant's claim to have purchased the land purchased from him was unfounded as he was not its legal owner. He contended that the applicant's argument that he had an arguable appeal with chances of success was speculative and lacked merit as the magistrate's court's decision was based on sound legal principles and should be upheld. He contended that the applicant was not in occupation of the suit land and that he stopped cultivating it years ago and that even if he were on the land, he was a trespasser. He urged that the applicant had not demonstrated sufficient reason to warrant the grant of leave to appeal out of time and that the application be dismissed with costs.
7. The court directed parties to file and exchange written submissions which it considered. The applicant relied on Section 79G of the [Civil Procedure Act](#) and submitted that, the court delivered its ruling on 29/6/2023 and that he filed the application seeking leave to appeal out of time on 9/8/2023, a delay of nearly two months. The court notes that the application was actually filed on 14/8/2023. Nonetheless, he submitted that the delay was occasioned by factors beyond his control including the failure by his previous advocates to take timely action to obtain the ruling which necessitated the withdrawal of instructions. He urged that he acted promptly upon receiving the ruling by filing the application for extension of time and invited the court to consider his diligent efforts to obtain the ruling. He submitted that a reasonable explanation for the delay in filing the appeal had been given and that granting leave to file the appeal out of time would not prejudice the respondent in a manner that could not be compensated by costs.
8. The respondent reiterated the contents of his replying affidavit and submitted that the applicant had not met the threshold for the grant of leave to appeal out of time. He urged that the application should be dismissed with costs.
9. The issue for determination is whether the court should grant leave to the applicant to file the appeal out of time. Section 79G of the [Civil Procedure Act](#) provides that an appeal from a subordinate court to the High Court should be filed within 30 days of the date of judgement or order appealed against. The provision allows the court to extend time if sufficient cause is shown. Order 50 Rule 6 of the [Civil Procedure Rules](#) empowers the court to extend time upon sufficient cause being demonstrated. The principles guiding the exercise of discretion in extending time were set out in [Salat v Independent Electoral and Boundaries Commission & 7 others](#) [2014] KESC 12 (KLR), where the court identified factors to be considered such as the reason for the delay, the length of the delay, the degree of prejudice to the opposing party, and whether the intended appeal had merit.



10. In this case, the ruling sought to be appealed against was delivered on 29/6/2023 and the application was filed on 14/8/2023, a delay of one month and 16 days. The explanation given for the delay is that the registry delayed in furnishing a copy of the ruling to enable the applicant file an appeal. The applicant attached correspondence between him and the registry showing the efforts he made towards obtaining the ruling. He also attached copy of an email sent to Kituo Cha Sheria showing that they received the ruling on 1/8/2023. The court is therefore satisfied with the explanation the applicant has given for the delay in filing the appeal.
11. The court allows the application dated 9/8/2023. The costs of the application shall abide the outcome of the appeal.

DELIVERED VIRTUALLY AT EMBU THIS 3RD DAY OF JUNE 2025.

K. BOR

JUDGE

In the presence of: -

Ms. P. Nekoye holding brief for Ms. N. Njuguna for the Applicant

Diana Kemboi- Court Assistant

No appearance for the Respondent

