



**Wanjiru (Suing on Behalf of Wanjiku Gachara Mbeu Deceased) v
Limberia & 3 others (Environment and Land Miscellaneous Application
E025 of 2024) [2025] KEELC 5134 (KLR) (10 July 2025) (Ruling)**

Neutral citation: [2025] KEELC 5134 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYERI
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E025 OF 2024**

**JO OLOLA, J
JULY 10, 2025**

BETWEEN

**JOHN WANJOHI WANJIRU APPELLANT
SUING ON BEHALF OF WANJIKU GACHARA MBEU DECEASED**

AND

**NAFTALY NDUMBA LIMBERIA 1ST RESPONDENT
MICHAEL KARANI WANJOHI 2ND RESPONDENT
THE LAND REGISTRAR NYERI 3RD RESPONDENT
THE COUNTY DIRECTORATE OF SURVEY, NYERI COUNTY 4TH
RESPONDENT**

RULING

1. By the Notice of Motion dated 16th September, 2024, John Wanjohi Wanjiru (the Applicant) prays for the following:
 1. That the Honourable Court be pleased to enlarge time and grant the Applicant leave to file an Appeal out of time against the decision of the Land Registrar on the boundaries of Land Parcel No. Gakawa/Githima Block 1/Burguret 188;
 2. That there be a stay of execution of the decision made by the Registrar on the boundaries of the suit land Parcel No. Gakawa/Githima Block 1/ Burguret 188 pending the hearing and determination of the intended Appeal;
 3. That pending the hearing and determination of this application and the intended Appeal an interlocutory injunction do issue to restrain the 1st and 2nd Respondents by themselves,



their servants, workmen, agents, heirs, personal representatives or otherwise howsoever from trespassing, disposing off, dealing with, transferring, or interfering in any manner whatsoever with the parcels bordering the disputed boundary and referenced as Land Parcels No. Gakawa/Githima Block 1/Burguret 3657, 36668, 3662, 3663, 3669, 3253, 3254, 3255 & 3256;

4. That pending the hearing and determination of the application and the intended Appeal, the Honourable Court be pleased to order and direct the 3rd and 4th Respondents to conduct a comprehensive re-survey of the following land parcels; Land Parcel Nos Gakawa /Githima Block 1/Burguret 175, 176, 177, 178, 179, 180, 181 (now subdivided into parcels No. 2607, 2608, 2609, 2610, 182, 183, 184, 185, 186) and Gakawa/Githima Block 1/Burguret 187, 188, 189, 190, 191, 192, 193, 194, 195, 196 (now subdivided into parcels No. 4296, 4297 and 4298) and 198 and 199 (now sub divided into parcels No. 296, 2927, 2928, 2929, 2930, 2931, 2932 and 2933) with the aim of re-establishing all block parcels and their respective boundaries; re-establishing the roads within the surveyed area, providing a comprehensive report detailing the acreage of each specific parcel, outlining how the acreage has been interfered with, reduced , improved or altered as a result of the re-survey exercise and that the 3rd and 4th respondents be directed to complete the re-survey within Forty Five (45) days and file the Comprehensive Report within a further Twenty One (21) days thereafter;
 5. That the time for filing any required documents relating to the Appeal be extended as the Court deems fit;
 6. That upon leave being granted to Appeal out of time, the Appeal herein be deemed as duly filed;
 7. That this Honourable Court may provide specific directions regarding the conduct of the Appeal and timelines for filing any further documents;
 8. That this Honourable Court grants leave to the Applicant to adduce new evidence in support of the Appeal;
 9. That the Applicant be granted leave to file further Affidavits or documents as may be necessary in support of the Appeal;
 10. That the Honourable Court grants any other relief that it deems just and expedient in the circumstances of this case; and
 11. That the costs of this application do abide the outcome of the Appeal.
2. The Application is supported by an Affidavit sworn by the Applicant on 16th September, 2024 and is premised on the grounds, inter alia that:
- i. The Applicant's ancestral Land Parcel No. Gakawa/Githima Block 1/Burguret 188 has enjoyed ancestral boundaries that date back generations without any dispute;
 - ii. The boundary dispute was engineered by the 1st and 2nd Respondents who are the purchasers of the land directly adjoining the Applicant's parcel and which parcel was then known as Gakawa/Githima Block 1/Burguret 186.
 - iii. The 1st and 2nd Respondents have since sub-divided the said parcel No. 186 into 28 plots after which they lodged a boundary dispute and have now been awarded 31 metres of land excised from the Appellant's ancestral land parcel No. 188;



- iv. The Applicant is aggrieved by the decision of the Registrar on demarcation of a road between the Applicant's portion and the 1st and 2nd Respondent's portion and is desirous of appealing the same; and
 - v. The delay in filing the Appeal was occasioned by the Applicant's failure to access the necessary legal resources and information to formulate an appeal.
3. Naftaly Ndumba Limberia and Michael Karani Wanjohi (the 1st and 2nd Respondents) are opposed to the application. The two have filed Grounds of Opposition dated 11th November, 2024 in which they assert that the orders sought in the application are untenable as the delay in appealing the Ruling is inordinate.
 4. In their Replying Affidavit sworn on 18th November, 2024, the 1st and 2nd Respondents aver that the Land Registrar Nyeri visited the parcels of land to ascertain the claim that the fence erected by the owner of the parcel number 188 had encroached on parcel numbers 3253-3256 and 3216. They aver that it was the finding of the Land Registrar that there exists in the Registry Index Map (RIM) for the area a road between the said parcels of land but which does not exist on the ground.
 5. The Respondents further asserts that it was the finding of the and Registrar that the fence defining parcel No. 188 was wrongly positioned and advised all parties to respect the beacon laid out.
 6. I have carefully perused and considered both the application as well as the response thereto. I have similarly perused and considered the submissions placed before me by the Learned Advocates representing the parties.
 7. By his application before the court the Applicant has made a raft of 11 prayers urging the court to grant them all. The basic prayer which the court must first deal with however is the application that this court be pleased to enlarge time and grant the Applicant leave to file an appeal out of time against the decision of the Land Registrar, Nyeri issued in regard to the parcel of land known as Gakawa/Githima Block 1/Burguret 188.
 8. As regards an Appeal arising from the decision of the Land Registrar Section 40(6) of the [Land Registration \(General\) Regulations, 2017](#), provides that:

“ Any party aggrieved by the decision of the Registrar made under paragraph (5) may, within thirty days of the date of notification, appeal the decision to the court.”
 9. From the material placed before the court, it is apparent that the decision sought to be appealed was issued on 2nd December, 2022. That was some 2 years before this application was made.
 10. In [Nicholas Kiptoo Arap Salat v Independent Electoral and Boundaries Commissions & 7 Others](#) (2014) eKLR, the Supreme Court did set the underlying principles for the exercise of a court's discretion to extend time as follows:
 1. 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;
 2. A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the court;
 3. Whether the court should exercise the discretion to extend time, is a consideration to be made on a case to case basis;



4. Whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the Court;
 5. Whether there will be any prejudice suffered by the respondents if the extension is granted;
 6. Whether the application has been brought without undue delay; and
 7. Whether in certain cases, like election petitions, public interest should be a consideration for extending time.”
11. In the matter herein, the Applicant has sought leave to appeal a decision that was made by the Land Registrar some two years earlier. In his Affidavit sworn in support of the application, the Applicant explains the reasons for the delay at paragraph 15 thereof as follows:
- “15. The delay in filing this appeal is due to several factors that were beyond my control, including challenges in accessing legal resources, delays in securing legal representation, and changes in my personal circumstances, such as relocation and employment transitions. These circumstances were compounded by an initial attempt to seek redress in the Magistrate’s court, which ruled it lacked jurisdiction over the matter.”
12. In further support of the position, the Applicant avers as follows at paragraph 6 of his Supplementary Affidavit sworn on 20th November, 2024;
- “6. That I dispute the Respondent’s assertion in Paragraph 18 regarding a four-year delay being inordinate. The delay was occasioned by procedural misunderstandings and reliance on lay advice. Equity dictates that the court should not punish a party for procedural lapses where substantive justice can still be rendered.”
13. I was however not persuaded that the above generalised explanations were a proper justification for the delay herein. The law required the Applicant to file an Appeal within 30 days of the decision. From a perusal of the material placed before the court, it was clear that even the matter that was wrongly instituted in the Magistrate’s Court was filed more than six (6) months after the decision was made.
14. The Applicant has not explained what were the difficulties he had in accessing the necessary legal resources and information to formulate his Appeal to this court. The Applicant does not even explain when the suit in the lower court was struck out. As the Applicant relies on equity, it is important to emphasize that equity aids the vigilant and not the indolent. In the circumstances herein the Applicant had clearly been indolent and the unreasonable delay in bringing this application has not been sufficiently explained.
15. In the premises, I am not persuaded that this is a matter in which the court should exercise its discretion in favour of the Applicant. Accordingly, the Motion dated 16th September, 2024 is hereby dismissed with costs to the Respondents.

RULING DATED, SIGNED AND DELIVERED IN OPEN COURT AND VIRTUALLY AT MOMBASA THIS 10TH DAY OF JULY, 2025

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J.O. OLOLA
JUDGE



In the presence of:

- a. Ms. Firdaus Court Assistant.
- b. Mr. Maingi Advocate for the Appellant/Applicant
- c. Mr. Mramba holding brief for Waziri for 1st and 2nd Respondents
- d. No appearance for the Attorney General

