



REPUBLIC OF KENYA



Muka Mukuu Farmers Cooperative Society Ltd v Somba & another (Environment and Land Miscellaneous Case E011 of 2022) [2025] KEELC 6016 (KLR) (16 September 2025) (Ruling)

Neutral citation: [2025] KEELC 6016 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ENVIRONMENT AND LAND MISCELLANEOUS CASE E011 OF 2022
AY KOROSS, J
SEPTEMBER 16, 2025**

BETWEEN

MUKA MUKUU FARMERS COOPERATIVE SOCIETY LTD APPLICANT

AND

GRACE MWIKALI SOMBA 1ST RESPONDENT

LENARD MUTHIGANI 2ND RESPONDENT

RULING

1. The notice of motion that is before this court is dated 2/03/2022 and has been filed by the applicant, in which it seeks the following reliefs from this court: -
 - a. Spent.
 - b. The court be pleased to extend time to file a memorandum and record of appeal out of time.
 - c. Spent.
 - d. The court be pleased to stay any proceedings in the Co-operative Tribunal case no. 164 of 2021 pending hearing and determination of the intended appeal.
2. The motion is supported by several grounds on the face thereof and the supporting affidavit of Peter Ngui Mulili, deposed on 2/03/2023. The grounds in support of the motion are materially that: a) he was aggrieved by the decision in Co-operative Tribunal case no. 164 of 2021 that was rendered on 25/11/2021 (impugned decision), b) on 8/12/2021, it requested for a copy of the ruling for purposes of lodging the appeal and even made several visits to the registry, but it was not fruitful until January 2022, c) it was around this time that courts were implementing the electronic filing system, hence it faced challenges. It is worth mentioning that the impugned decision was availed to this court through a further affidavit sworn on 27/10/2023.



3. In opposition, the 1st respondent filed a replying affidavit deposed on 12/04/2024 and in brief, asserted; a) this court has discretion to allow and extend time to appeal but the legal threshold has not been met as no plausible reasons for the delay have been advanced, b) there was no certification of the delay, c) the alleged letters to the tribunal were unsigned and lastly, d) extension of time is an equitable remedy.
4. As directed by the court, submissions were received by this court from the law firms of Mss. Laichena Mugambi & Ayieko LLP Advocates for the applicant, and Chimei & Co. Advocates for the 1st respondent. In that regard, this court is grateful to counsels for their well-researched submissions. However, it is unfortunate that this court did not benefit from the submissions of the 2nd respondent, who did not participate in these proceedings.
5. Having carefully given thought to the motion, its grounds, affidavits, and rival submissions, the issues that arise for resolution and shall be addressed consecutively are: -
 - a. Whether an extension of time should be granted.
 - b. Whether proceedings in Co-operative Tribunal case no. 164 of 2021 should be stayed.
 - a. Whether an extension of time should be granted.
6. As correctly submitted by the 1st respondent's counsel, Section 79G of the [Civil Procedure Act](#), read together with Section 81 of the [Co-operative Societies Act](#), states that any party involved in proceedings before the tribunal who is dissatisfied with its decision may, within 30 days of the decision, appeal against it to the superior court authorised to hear such appeals.
7. However, in cases of delay, and as rightly pointed out by the applicant's counsel, parties can, under Section 95 of the [Civil Procedure Act](#), apply to the court to exercise its sound discretion based on good and sufficient grounds. The court may then extend the time as it sees fit, even if the originally fixed period has expired. Section 79G of the [Civil Procedure Act](#) states;

“Every appeal from a subordinate court to the High Court shall be filed within a period of thirty days from the date of the decree or order appealed against, excluding from such period any time which the lower court may certify as having been requisite for the preparation and delivery to the appellant of a copy of the decree or order:

Provided that an appeal may be admitted out of time if the appellant satisfies the court that he had good and sufficient cause for not filing the appeal in time.”

While Section 95 of the [Civil Procedure Act](#) provides 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.”
8. The 1st respondent's counsel and rightfully so, has submitted that the undergirding non-exhaustive principles in the exercise of judicious discretion for enlargement of time were set by the Supreme Court of Kenya in *Salat v Independent Electoral and Boundaries Commission & 7 others* [2014] KESC 12 (KLR) where in paragraph 85 of its decision, the Apex court outlined the following tests:-

“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;



A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the court;

Whether the court should exercise the discretion to extend time, is a consideration to be made on a case to case basis;

Whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the Court;

Whether there will be any prejudice suffered by the respondents if the extension is granted;

Whether the application has been brought without undue delay; and

Whether in certain cases, like election petitions, public interest should be a consideration for extending time.

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Whether in certain cases, like election petitions, public interest should be a consideration for extending time.”

9. Furthermore, this court must also regard its primary aim of promoting the fair, expeditious, proportionate, and accessible resolution of disputes as outlined in Section 3 of the [Environment and Land Court Act](#). Thus, the question that arises is whether the applicant has advanced satisfactory reasons warranting the enlargement of time for lodging an appeal. In this case, the impugned decision was rendered on 25/11/2021, and the instant motion was filed on 2/03/2022, a period of close to 4 months. Hence, there was a delay.
10. To explain these months away, the applicant availed an email extract dated 8/12/2021 and letters respectively dated 19/08/2021 and 26/11/2021 seeking a certified copy of the impugned ruling from the tribunal. Nonetheless, the 1st respondent has challenged these correspondences and states that they do not bear any stamp that they were received by the tribunal or that a receipt was ever issued to it.
11. Since the applicant claimed that the delay was solely caused by the tribunal for failing to provide the impugned decision to it, it was required to present tangible evidence to support such assertions to the court's satisfaction, which it did not. Apart from the email of 8/12/2021 to the tribunal, the letters purportedly written to the tribunal by counsel on record for the applicant, dated 18/08/2021—about which the court is uncertain whether there was an error in its dating or otherwise—and another of 26/11/2021, all lack a receiving stamp from the tribunal.
12. Furthermore, a receipt was never presented to this court to confirm when the ruling was paid for. This court has glanced at the impugned decision, and it was certified by the tribunal on 21/12/2021, yet the motion was filed 3 months later, which this court considers late. Furthermore, the specific challenges



that the applicant faced in the court's electronic filing, either by email or the current CTS system, have not been expounded upon.

13. Additionally, the unavailability of the ruling did not prevent an appeal, as the applicant's counsel was present during the delivery of the ruling and even sought leave to appeal, as well as copies of the proceedings and ruling. Consequently, this court finds that the applicant has not demonstrated that it justifies the exercise of discretion in its favour.
14. Ultimately, and for the foregoing reasons and finding, this court dismisses the notice of motion dated 2/03/2022 with costs to the 1st respondent. This file is hereby effectively marked as closed.

It is so ordered.

DELIVERED AND DATED AT MACHAKOS THIS 16TH DAY OF SEPTEMBER, 2025.

HON. A. Y. KOROSS

JUDGE

16. 09.2025

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In the presence of;

M/s Kirui for the applicant.

M/s Karue holding brief for Mr. Chimei for 1st respondent.

Ms Kanja- Court Assistant.

