



**Ondiege & another v Orege (Environment & Land Miscellaneous Case E015 of 2024) [2025] KEELC 4008 (KLR) (22 May 2025) (Ruling)**

Neutral citation: [2025] KEELC 4008 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT SIAYA  
ENVIRONMENT & LAND MISCELLANEOUS CASE E015 OF 2024**

**AE DENA, J**

**MAY 22, 2025**

**BETWEEN**

**COLLETA ANYANGO ONDIEGE ..... 1<sup>ST</sup> APPLICANT**

**ROSALINE CHERONO ONYANGO ..... 2<sup>ND</sup> APPLICANT**

**AND**

**JOHN OMONDI JASSOR OREGA ..... RESPONDENT**

**RULING**

1. The Applicants Colletta Anyango Ondiege and Rosaline Cheronon Onyango were the 1<sup>st</sup> and 2<sup>nd</sup> Defendants respectively in Ukwala Principal Magistrates Court Environment and Land Case No.19 of 2020. The Respondent was the plaintiff therein. The trial court delivered judgement on 18/10/2023 where the court upheld the Plaintiffs case and dismissed the defendants counterclaim. Dissatisfied with the said judgement the Applicants have filed the present application dated 16/09/2024 seeking leave to file appeal out of time.
2. The application is grounded on the grounds on its face and supported by the applicant's affidavit sworn jointly on 16/09/2024. It is deponed that the judgement was delivered in chambers in their absence and their advocate did not inform them of the same. That the judgement was availed to them on 13/09/2024 following persistent demands from the advocate. That they inquired from the advocate whether he had lodged an appeal who confirmed that he had done so but failed to give them the appeal number. Being in doubt they visited the court registry in Siaya on 13/09/2024 when they discovered no appeal had been filed.
3. The deponents state that they are lay women who did not know the timelines within which to lodge an appeal. That the mistake of the advocate who represented them should not be visited upon them. The applicants aver that they will suffer injustice and undertake to abide by any condition set by the court.



4. The application is undefended. The Respondent was duly served as evidenced by the Affidavit of service sworn by Joshua Juma Kajuma on 28/01/2024.
5. The application was disposed of by way of written submissions. The applicants submissions are dated 26/02/2025. The submission's reiterate the depositions in the supporting affidavit.

### **Determination**

6. I have considered the application, the supporting affidavit and the annexed documents. The main issue for determination is whether the application meets the requirements for grant of leave to appeal out of time.
7. The application is brought under the provisions of Section 3A and 799 of the *Civil Procedure Act* and order XXI Rule 22(1) of the *Civil Procedure Rules*. The court notes there may be a typo on section 799 which should be section 79 which is on appeals. However I note the inherent jurisdiction of the court has been invoked and I will proceed to determine the substance of the application. I also recognise article 159 of the *Constitution* for the court to exercise justice devoid of technicalities.
8. Section 79G of the *Civil Procedure Act* is on Time for filing appeals from subordinate court and provides that; -

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.
9. The power to enlarge time under Section 79G is discretionary. It is now established that discretion must be exercised judiciously. The Supreme court of Kenya in *Nicholas Kiptoo Arap Korir Salat v IEBC & 7 others* Application No 16 of 2014 (2014) eKLR reiterated the court will consider whether the explanation given for any delay is reasonable and credible. That there must also exist extenuating circumstances to enable the court exercise its unfettered jurisdiction in favour of an applicant. The court however asserted inordinate delay cannot thus attract favourable exercise of discretion.
10. Applying the above guidance to the facts of this case the court will now proceed to analyse if the reasons advanced for the delay are reasonable and sincere.
11. The applicants' case is that they were never informed of the outcome of the judgement in the trial court and they only obtained it much later on 13/09/2024. I note that they have annexed to their submissions a cover of a parcel from Ombati Otieno Opondo Advocates addressed to Colleta Anyango Ndiege who is the 1<sup>st</sup> applicant. A phone message advising of the arrival of the same at Ugunja for collection from EasyCoach is also annexed. My perusal of the impugned judgement reveals that Mr. Obwanda advocate held the brief for Ombachi and Company advocate for the 1<sup>st</sup> and 2<sup>nd</sup> defendants during the trial and who are the present applicants. I have also noted that on the date judgement was delivered the same advocate applied for certified copies of proceedings with the intention of appealing. I will steer off the allegation's that the said counsel lied to the applicants. What is clear to the court is that there was intention to appeal, there is also evidence that the parcel containing the judgement was received on 13/09/2024. Looking at this evidence vis a vis the right to appeal I would treat the lack of knowledge of the outcome as sufficient reason to warranting the courts consideration.



12. The other criteria is the timeliness with which leave is sought. I'm aware that there is no set rule as to what constitutes inordinate delay. Whether or not a party is guilty of inordinate delay depends on the circumstances of the case see the holding in *Cecilia Wanja Waweru v. Jackson Wainaina Muiruri & another* [2014] eKLR I have noted the lapse of more than 9 months since the judgement was delivered and the filing of the present application. The court is of the view that since Section 79G permits the extension of time to file an appeal then once the delay is convincingly explained, then time ought to be enlarged.
13. The upshot of the foregoing is that the application dated 16/09/2024 is hereby allowed. The applicant shall file the intended appeal within 14 days of the date of this ruling failure to which the leave shall automatically lapse.

**DELIVERED AND DATED AT SIAYA THIS 22<sup>ND</sup> DAY OF MAY 2025.**

**HON. LADY JUSTICE A.E. DENA**

**JUDGE**

**22/5/2025**

**RULING DELIVERED VIRTUALLY THROUGH MICROSOFT TEAMS VIDEO  
CONFERENCING PLATFORM IN THE PRESENCE OF:**

Court Assistant: Ishmael Orwa

