



REPUBLIC OF KENYA



KENYA LAW
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**Mainga & 9 others v Transmara Sugar Company Limited (Miscellaneous
Civil Case 1 of 2024) [2025] KEHC 5817 (KLR) (8 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 5817 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KILGORIS
MISCELLANEOUS CIVIL CASE 1 OF 2024**

CM KARIUKI, J

MAY 8, 2025

(FORMERLY MIGORI HIGH COURT MISC. APP. NO. E218 OF 2023)

IN THE MATTER OF ARTICLE 159 OF THE CONSTITUTION OF KENYA

AND

IN THE MATTER OF S. 15(A) OF THE ARBITRATION ACT NO. 4 OF 1995

AND

IN THE MATTER OF SECTIONS 1A AND 1B OF THE CIVIL PROCEDURE ACT

AND

**IN THE MATTER OF AN APPLICATION FOR
TERMINATION OF THE ARBITRATOR'S MANDATE**

AND

IN THE MATTER OF KENYENYA ARBITRATION COMMITTEE

AND

IN THE MATTER OF AN APPLICATION

BETWEEN

OMARE MAINGA 1ST APPLICANT
JUSTUS INGISA NYAMORA 2ND APPLICANT
ZACHARIA ONDARA 3RD APPLICANT
CHARLES OGANGA 4TH APPLICANT
JAPHETH K MEKUBO 5TH APPLICANT
JOEL NYAITO 6TH APPLICANT
MOSES MWENGEI MBECHÉ 7TH APPLICANT



NELSON M MOKUA 8TH APPLICANT
NYAMBEKI KIMONGE 9TH APPLICANT
MARTA MORAA OKEMWA 10TH APPLICANT

AND

TRANSMARA SUGAR COMPANY LIMITED RESPONDENT

RULING

1. The Applicant vide an amended notice of motion dated 06/03/2025, sought orders;
 - a. Spent.
 - b. That this honourable court be pleased to extend/enlarge time for the applicants' application for leave to appeal the ruling of the honourable court delivered on 04/11/2024.
 - c. That upon granting prayer 1A above, the applicants be granted leave to appeal the said ruling of this Hon. court delivered on 4/11/2024.
2. The application is premised on section 75 of the *Civil Procedure Act* and Order 43 Rule 1(3) of the Civil Procedure Rules.
3. The application is based on the grounds set out on the face of the application and the affidavit in support of the amended application sworn by KERARIO MARWA on 06/03/2025.

The background.

4. The ruling was delivered dismissing the applicant's application on 4/11/2024.
5. That immediately after delivery of the ruling, the applicant's counsel on record drafted and uploaded an application for leave to appeal the rendered ruling.
6. That unknown to the counsel on record, his office legal clerk inadvertently failed to file the said application as soon as the same was drawn.
7. That the said application was filed on 29/11/2024, way after the 14-day statutory timelines had lapsed.
8. That this honourable court has discretionary powers to extend the timelines within which the applicants can file for leave to appeal the said ruling.
9. The applicants intend to appeal the said ruling.
10. The applicants' advocates on record inadvertently forgot to seek for leave to appeal the said ruling.

The response.

11. The respondent opposed the application vide Grounds of opposition dated 03/02/2025.
12. The respondent contends that the application offends the provisions of rule 41(1)(a) (ii) of the Court of Appeal Rules 2022, having been brought way after the statutory 14-day period has lapsed.
13. The respondent contends that from the foregoing, the application should be dismissed with costs.



Directions of the court.

14. The applications were canvassed by way of written submissions. The applicant has filed. The respondent has not filed.

The Applicant's Submissions

15. The applicant submitted that this court is clothed with unfettered discretion to enlarge time in circumstances such as this to promote justice. The applicant, therefore, urged this court to exercise its discretion and allow the applicant's instant application.

Analysis and Determination.

16. This court considered the application, the supporting affidavit, and the applicant's submissions.

Issues

17. The main issue for determination: -whether the Applicant should be granted leave to appeal out of time.
18. The governing provision for leave to appeal out of time is
19. Section 79G, which states as follows: -

“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.

20. The court has a wide discretion to grant leave to appeal out of time on certain conditions.
21. The Supreme Court stated the principles for extension of time in the case of Nicholas Kiptoo Arap Korir Salat v. Independent Electoral and Boundaries Commission and 7 Others, Sup. Ct Application No. 16 of 2014 as follows;

“In an application for extension of time, the whole period of delay should be declared and explained satisfactorily to the Court. The underlying principles that a Court should consider in exercise of the discretion to extend time are:

- 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 for extension of time has the burden of laying a basis to the satisfaction of the court;
- iii. The Court's exercise of its discretion to extend time, is a consideration to be made on a case to case basis
- iv. Where there is a sensible reason for the delay, the delay should be explained to the satisfaction of the Court;



- v. Whether there will be any prejudice suffered by the respondents if the extension is granted;
 - vi. Whether the application has been brought without undue delay; and
 - vii. Whether in certain cases, like election petitions, public interest should be a consideration for extending time.
22. The ruling sought to be appealed against was delivered on 04/11/2024. The application was filed on 08/11/2024 but was later amended on 06/03/2025. The application was filed 4 days after delivery of the ruling. I find there was no delay as the same was filed within the prescribed timelines.
23. This court finds that the application was not necessary. For avoidance of doubt, the applicant is granted leave to file an appeal. Appeal be filed within 14 days
24. Orders accordingly.

DATED, SIGNED, AND DELIVERED AT KILGORIS THROUGH TEAMS APPLICATION, THIS 8TH DAY OF MAY, 2025.

CHARLES KARIUKI

JUDGE

In The Presence of:

Court Assistant: Mr.nyangaresi

