



Ntari v Joseph (Environment and Land Miscellaneous Application E012 of 2025) [2025] KEELC 3805 (KLR) (15 May 2025) (Ruling)

Neutral citation: [2025] KEELC 3805 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E012 OF 2025**

BM EBOSO, J

MAY 15, 2025

BETWEEN

JOHN KINYUA NTARI APPLICANT

AND

LUCY KANANU JOSEPH RESPONDENT

RULING

1. Falling for determination in this ruling is the notice of motion dated 10/3/2025, brought by John Kinyua Ntari [the applicant]. Through it, the applicant seeks an order enlarging the time within which to lodge an appeal to this court against the judgment rendered on 4/2/2025 in Meru Chief Magistrate Court E & L Case No. E030 of 2024.
2. The application was premised on the grounds set out on the face of the motion and in the applicant's affidavit dated 10/3/2025. It was canvassed through written submissions dated 14/4/2025, filed by Kiautha Arithi & Co Advocates. The case of the applicant is that the impugned judgement of the subordinate court was delivered on 4/2/2025 in favour of the respondent. He contends that he immediately instructed his advocates to institute an appeal because he was aggrieved by the said judgment. The applicant states that they applied to be furnished with the said judgment on 5/2/2025, adding that they had already prepared a draft memorandum of appeal awaiting filing.
3. The applicant states that they were informed that the judgment was not ready because it was handwritten. Consequently, they had to wait for it to be typed. He further states that to date, the typed judgment is not ready, hence the reason for the delay in filing the intended appeal.
4. The applicant contends that he stands to suffer great prejudice and irreparable loss and damage if the orders sought are not granted. It is his case that he has an arguable appeal that raises triable issues and that the intended appeal has high chances of success. The applicant adds that the application has been brought without inordinate delay.



5. The respondent opposed the application through a replying affidavit dated 2/4/2025 and written submissions dated 5/5/2025, filed by Jesse Mwit Advocates. The case of the respondent is that, an appeal from the subordinate courts is by way of a memorandum of appeal, which ought to be filed within 30 days of delivery of the impugned judgment. The respondent contends that the applicant did not file the memorandum of appeal within the stipulated time and has not given a plausible reason why he did not file the appeal within the stipulated time. She adds that a party does not need to wait for a copy of the judgment before filing a memorandum of appeal.
6. The respondent contends that the delay in filing the appeal was deliberate, adding that the applicant should have filed the memorandum of appeal within the stipulated time and amended it upon receipt of the judgment, if necessary. She further contends that allowing the application will be prejudicial to her because it will amount to depriving her of the use of the suit property, which she bought for value from the applicant, adding that this will delay her enjoyment of the fruits of her judgment. She contends that the draft memorandum of appeal does not raise arguable grounds of appeal.
7. The respondent states that the application is made in bad faith, adding that the applicant sold the suit property to her for valuable consideration. She further states that retaining both the suit property and the purchase price amounts to unjust enrichment. The respondent argues that the application is not meritorious and should be dismissed with costs.
8. The court has considered the application, the response to the application, and the parties' respective submissions. The court has also considered the relevant legal frameworks and jurisprudence. The key question that falls for determination in this ruling is whether the application meets the criteria for enlargement of the limitation period for lodging an appeal in this court.
9. The limitation period for lodging an appeal in this court against judgments of the lower courts is set by Section 16A of the *Environment and Land Court Act* and Section 79G of the *Civil Procedure Act*. The frameworks in the two statutes provide for a limitation period of 30 days from the date of delivery of judgment. The two frameworks vest in this court discretionary jurisdiction to enlarge the prescribed limitation period. The legislated guiding principle in the two frameworks is that the discretionary jurisdiction should be exercised on the basis of good and sufficient cause.
10. The general jurisprudential principles that guide our courts whenever invited to exercise the above jurisdiction were outlined by the Supreme Court of Kenya in the case of *Nicholas Kiptoo Arap Korir Salat v. Independent Electoral and Boundaries Commission & 7 others* [2014] eKLR as follows:
 1. Extension of time was not a right of a party. It was an equitable remedy that was only available to a deserving party at the discretion of the court;
 2. A party who sought extension of time had the burden of laying a basis for it to the satisfaction of the court;
 3. Whether the court ought to exercise the discretion to extend time, was a consideration to be made on a case to case basis;
 4. Whether there was a reasonable reason for the delay, which ought to be explained to the satisfaction of the court;
 5. Whether there would be any prejudice suffered by the respondents if the extension was granted;
 6. Whether the application had been brought without undue delay; and;



7. Whether in certain cases, like election petitions, public interest ought to be a consideration for extending time.
11. The judgment giving rise to the application under consideration was rendered on 4/2/2025. The 30 days limitation period lapsed on 7/3/2025. The present application seeking enlargement of time was filed on 12/3/2025, which was exactly five (5) days after the lapse of the prescribed limitation period. The applicant has explained that he was unable to access the impugned judgment because at the time it was rendered it was handwritten and the Court Registry informed him that they were still typing the judgment. The respondent takes the view that the appellant should simply have filed a memorandum of appeal and amended it after obtaining a typed copy of the judgment.
12. Taking into account the criteria for enlargement of time, the explanation tendered by the applicant, and the response made by the respondent, the court takes the view that the applicant has demonstrated sufficient cause why there was a delay. It has also been demonstrated that the application was brought promptly. Consequently, the court will exercise its discretionary jurisdiction and grant the applicant an extension of seven (7) days within which to file and serve the memorandum of appeal.
13. Considering the circumstances that occasioned the delay, parties will bear their respective costs of the application.

DATED, SIGNED AND DELIVERED AT MERU THIS 15TH DAY OF MAY 2025

B M EBOSO [MR]

JUDGE

In the presence of:-

Mr. Gikunda Kiautha for the Applicant

Mr. Tupet – Court Assistant

