



**Ngagi v Njoka (Environment and Land Miscellaneous Application
E001 of 2025) [2025] KEELC 4817 (KLR) (23 June 2025) (Ruling)**

Neutral citation: [2025] KEELC 4817 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT CHUKA
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E001 OF 2025**

BM EBOSO, J

JUNE 23, 2025

BETWEEN

NJUE NGAGI APPLICANT

AND

FRANCIS NJOKA RESPONDENT

RULING

1. On 2/12/2024, the Chief Magistrate Court at Chuka (Hon J Gandani, CM) rendered a judgment in Chuka CMC E&L Case No 139 of 2017. Under Order 50 rule 4 of the Civil Procedure Rules, the period running from the twenty-first of December 2024 and the thirteenth of January 2025 (both days included) was to be excluded when reckoning the limitation period for the purpose of lodging an appeal against the said judgment.
2. While still within the 30 days limitation period, on 23/1/2025, Njue Njagi filed an application dated 22/1/2025 in which he sought an order enlarging the time within which to lodge an appeal against the above judgment. In addition, he sought a temporary order of status-quo maintaining the boundary of the two parcels involved in the dispute.
3. Owing to errors relating to designation of the parties to the application, on 24/2/2025, the court directed the applicant to amend the application to capture the designated parties correctly. The applicant subsequently brought an amended motion dated 10/3/2025. The said amended application is the subject of this ruling. Through it, the applicant seeks the following verbatim orders:
 - “ 1. That this honourable Court be pleased to extend time for filing an appeal in relation to the judgment delivered on 2nd December 2024 by Honourable Joyce Gandani at Chuka Law Court No 1 in case of boundary dispute.
 2. That this honourable court be pleased to issue a temporary order of status quo maintaining the boundary of two law (sic) parcels as they were since



September 2003 and April 1990 when the title deeds were issued by Land Registrar pending the hearing and determination of this application.

3. That upon granting prayers sought this Honourable Court to provide timelines for filing the notice and memorandum of appeal.
 4. That this honourable court be pleased to grant any further orders as may be just an expedient in the interest of justice.
 5. That costs of and incidental to this application be borne by the respondent.”
4. It is clear from the wording of prayer 2 of the motion that the temporary order of status-quo was to be in force pending the hearing and determination of the application. Consequently, at this point, the plea for a temporary order of status-quo (prayer 2) is spent because the application is being determined through this ruling.
 5. The application was premised on the grounds set out on the face of the motion and in the applicant’s affidavit dated 22/1/2023 (sic). It was canvassed through brief oral submissions. The case of the applicant is that the impugned judgment was rendered by Hon J. Gandani on 2/12/2024. He was aggrieved by the judgment. He was, however, unable to lodge an appeal against the judgment within the prescribed time because his health “deteriorated significantly” making it difficult for him to follow up on the case. The applicant exhibited a discharge note from Kathathani Medical Centre dated 7/2/2025, showing that he was admitted at the medical facility on 15/12/2024 and discharged on 7/1/2025. The medical note indicates that during admission, he was attended to by a clinician by the name Gitonga G. Ndi.
 6. The applicant states that this court has discretion to enlarge time, and observes that the delay was caused by circumstances beyond his control. He contends that the intended appeal has a high chance of success and urges the court to enlarge time in the interest of justice.
 7. The respondent opposed the application through a replying affidavit dated 17/4/2025. The case of the respondent is that the application is frivolous, vexatious, an abuse of the court process, and a waste of the court’s time. He faults the applicant for failing to lodge an appeal within the prescribed time. The respondent further contends that the application is unmerited because the applicant failed to attach a draft copy of the memorandum of appeal to enable the court examine the grounds and weigh the probability of success.
 8. The court has considered the application, the response to the application and the parties’ respective submissions. The court has also considered the relevant law. As observed in the opening paragraph of this ruling, the plea for an interim order of status-quo is, at this point, spent. The two questions to be determined in this ruling are: (i) Whether failure to exhibit a draft memorandum of appeal is fatal to the application under consideration; and (ii) Whether the application meets the criteria for enlargement of time for lodging an appeal. Before I dispose the two issues, I will outline the legal frameworks and the jurisprudence relevant to the general question of enlargement of time.
 9. The limitation period for lodging an appeal before this court against judgments of lower courts is contained in 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 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. In *Mukora Mwangi v Charles Gichina – Civil Application No. Nai 255 of 1997*, the Court of Appeal summoned up the following relevant principle:

“It is now well settled that the decision whether or not to extend the time for appealing is essentially discretionary. It is also well-settled that, in general, the matters which this court takes into account in deciding whether to grant an enlargement of time are: first, the length of the delay; secondly, the reason for the delay; thirdly (possibly), the chances of the appeal succeeding if the application is granted; and fourthly, the degree of prejudice to the respondent if the application is granted.”

12. Having outlined the relevant legal framework and the guiding principle, I now turn to the first issue. Is the applicant’s failure to attach and exhibit a copy of the draft memorandum of appeal fatal to the plea for enlargement of time? In *Nicholas Kiptoo Arap Korir Salat v Independent Electoral and Boundaries Commission & 7 Others (2014) Eklr*, the Supreme Court outlined the following law on the centrality of the draft instrument of appeal in an application for enlargement of time:

“Where one intends to file an appeal out of time and seeks extension of time, the much he can do is to annex the draft intended petition of appeal for the court’s perusal when making his application for extension of time, and not to file an appeal and seek to legalize it. Petition No 10 of 2014 having been filed out of time and without leave (an order of this court extending time) is expunged from the court’s record”

13. In *County Government of Murang’a & antoher (Sued as County Secreatry County Government of Muranga) v Njoroje (Civil Application 134 of 2019) [2022] KECA 403 (KLR) (4 March 2022) (Ruling); [2022] KECA 403 (KLR)* the Court of Appeal (Laibuta J A) stated as follows:

“With regard to the merit of the intended appeal, it is sufficient for the applicant to demonstrate that he or she has an arguable appeal with the likelihood of success. In the



absence of a draft memorandum of appeal or other material disclosing the grounds on which the intended appeal is to be anchored, I am unable to draw a reasonable conclusion that the intended appeal is arguable with the possibility of success. Indeed the application before me turns on my finding on this critical issue and no useful purpose would be served by a scrutiny of the remaining issues. For the avoidance of doubt, though I find that the applicants have sufficiently explained the reason for delay in filing their appeal; that the delay is, in the circumstances of this case, not inordinate; and that the respondent would not be prejudiced by extension of time to file the intended appeal. However, my findings on this account do not cure the fatal defect in failing to supply the court with a draft memorandum or other material setting out the grounds on which the intended appeal is preferred. Consequently, the applicants' motion fails and the same is hereby dismissed with no order as to costs."

14. It does emerge from the above prevailing jurisprudence that in the absence of a draft instrument of appeal and in the absence of any other material containing the concise grounds of the intended appeal, the court has no basis upon which to evaluate the question as to whether the applicant has demonstrated that he has an arguable appeal with a probability of success.
15. Although the reason for the delay sounds plausible and the "delay" itself was initially a misconception of the law, and the eventual delay was not inordinate, the applicant has failed to satisfy the criteria for enlargement of time principally because he has not demonstrated an arguable appeal with a probability of success.
16. For the above reason, the application initially dated 22/1/2025 and amended on 10/3/2025 fails and is rejected. In the absence of special circumstances, the general principle in Section 27 of the *Civil Procedure Act* shall apply – meaning that the applicant shall bear costs of the application, bearing in mind that the parties involved in the matter were not represented by advocates.

DATED, SIGNED AND DELIVERED VIRTUALLY AT CHUKA THIS 23RD DAY OF JUNE, 2025.

B M EBOSO [MR]

JUDGE

In the Presence of:

Njue Njagi – Applicant, Present in person

Francis Njoka – Respondent, Present in person

Court Assistant – Mr. Mwangi

