



Ndegwa (Suing as the Legal Representative of the Estate of Jedidah Wanjiku Ndegwa - Deceased) v Jonada Services Limited (Environment & Land Case 216 of 2016) [2025] KEELC 4580 (KLR) (19 June 2025) (Ruling)

Neutral citation: [2025] KEELC 4580 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT & LAND CASE 216 OF 2016**

**MAO ODENY, J
JUNE 19, 2025**

BETWEEN

JOHN GITAHU NDEGWA (SUING AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF JEDIDAH WANJIKU NDEGWA - DECEASED) PLAINTIFF

AND

JONADA SERVICES LIMITED DEFENDANT

RULING

1. This ruling is respect of the Plaintiff's/Applicant's Notice of Motion application dated 17th December, 2024, seeking the following orders:
 - a. Spent
 - b. That this Honourable Court be pleased to extend the time for filing a Notice of Appeal in respect of the decision delivered by the Honourable Justice Mwangi Njoroge on 19th January 2023 in Nakuru Elc No 216 of 2016.
 - c. That the Notice of Appeal dated 13th February, 2023 annexed hereto be deemed as duly filed and served.
 - d. That this Honourable Court be pleased to grant any other order as it may deem fit and just.
 - e. That the costs of this application be provided for.
2. The application is supported by the annexed affidavit of Peter Chege, the Plaintiff/Applicant's counsel who deponed that this court delivered a Judgment on 19th January, 2023 in this case and it dismissed the Plaintiff/Applicant's case. He further deponed that the Applicant filed their Notice of Appeal dated 13th February, 2023 on 16th February, 2023.



3. The Plaintiff/Applicant's counsel deponed that unknown to the Applicant, the Notice of Appeal was filed out of time and that the Honourable court delayed in providing a certified copy of the judgment and the delay in filing this appeal was occasioned by circumstances beyond the Applicant's control. Counsel further deponed that they filed a Memorandum of Appeal dated 22nd May, 2023 before the Court of Appeal.
4. The Defendant/Respondent filed Grounds of Opposition dated 17th December, 2024 and stated that this Honourable court cannot be requested to extend the time for the filing of an appeal to the Court of Appeal yet there is an incompetent appeal already filed at the Court of Appeal. The Respondent stated that it is the Court of Appeal that has the power to extend time for filing an Appeal out of time and not this Honourable Court and urged the court to dismiss the Application with costs.

Applicant's Submissions

5. Counsel for the Applicant filed submissions dated 11th February, 2025, relied on Section 95 of the Civil Procedure Act and submitted that where time has been set and a party has been unable to comply, then the court may exercise its discretionary jurisdiction and enlarge the time.
6. Counsel submitted that the application filed herein is meant to cure any incompetence on the Notice of Appeal already filed. Counsel relied on the cases of Nicholas Kiptoo Arap Korir Salat vs The Independent Electoral and Boundaries Commission & 7 others [2014] eKLR and Fabim Yasin Twaba vs Timamy Issa Abdalla & 2 others [2015] eKLR and urged the court to allow the Application as prayed.

Respondent's Submissions

7. Counsel for the Respondent filed submissions dated 17th December, 2024 and submitted that the Applicant cannot legally and procedurally claim to have an on-going appeal in the Court of Appeal and then come to this Court to ask for the extension of time to file an appeal that is still existing. Counsel urged the court to dismiss the Application with costs.

Analysis And Determination

8. The issue for determination is whether this court should extend the time for filing a Notice of Appeal in respect of the decision delivered by the Honourable Justice Mwangi Njoroge on 19th January 2023 in Nakuru Elc No 216 of 2016.
9. Section 7 of the Appellate Jurisdiction Act provides as follows:
 7. Power of High Court to extend time
The High Court may extend the time for giving notice of intention to appeal from a judgment of the High Court or for making an application for leave to appeal or for a certificate that the case is fit for appeal, notwithstanding that the time for giving such notice or making such appeal may have already expired:
Provided that in the case of a sentence of death no extension of time shall be granted after the issue of the warrant for the execution of that sentence.
10. In the case of Nicholas Kiptoo Arap Korir Salat vs. IEBC & 7 others, Supreme Court Application No. 16 of 2014[2014] eKLR the Supreme Court held that extension of time is not a right of a party but an equitable remedy available to a deserving party at the discretion of the court and the party seeking extension of time has the burden to lay a basis to the satisfaction of the court.



11. The court further stated that extension of time is a consideration on a case-by-case basis, and that delay should be explained to the satisfaction of the court. The other considerations to be looked into include whether there will be prejudice suffered by the respondents if the extension is granted; and whether the application is brought without undue delay and the issue of public interest must also be considered.
12. Similarly, in the case of *Paul Musili Wambua v Attorney General & 2 Others* [2015]eKLR, the Court of Appeal in considering an application for extension of time and leave to file the Notice of Appeal out of time, stated the following:

“ ... it is now settled by a long line of authorities by this court that the decision of whether or not to extend the time for filing an appeal the Judge exercises unfettered discretion. However, in the exercise of such discretion, the court must act upon reason(s) not based on whim or caprice. In general the matters which a court takes into account in deciding whether or not to grant an extension of time are; the length of delay, the reason for the delay, the chances of the appeal succeeding if the application is granted, the degree of prejudice to the respondent if the application is granted.”
13. The application for extension of time must be brought timeously and the delay in filing the Notice of Appeal must be explained to the satisfaction of the court. Counsel for the Applicant swore the supporting affidavit and stated that the failure to lodge the Appeal was due to the fact that a copy of the Judgment was not made available.
14. The Supreme Court further expounded in the case of *County Executive of Kisumu v County Government of Kisumu & 8 Others* [2017] eKLR and held:

“However, we hasten to add that a ground of delay of getting typed proceedings is not a prima facie panacea for a case of delay whenever it is pleaded. Each case has to be determined on its own merit and all relevant circumstances considered. It is worth reiterating that in considering whether to extend time, the whole period of delay should be stated and explained to the satisfaction of the court.
15. Counsel further stated that the Judgment was delivered via email, but they obtained a copy of the Judgment on 13th February 2023 and lodged a Notice of Appeal on 16th February 2023. He further stated that there is already an ongoing appeal before the Court of Appeal.
16. I notice that this Application was filed on 13th January 2025 which is more than 2 years after the Judgment was delivered. No explanation has been given for the delay in the filing of the application. Furthermore, counsel submits that there is already an ongoing Appeal in the Court of Appeal. If that is the case, then why is the Applicant seeking orders in this court, which can be granted by the Court of Appeal?
17. I have considered the Application, the submission by counsel and find that the Application lacks merit and is therefore dismissed with costs. The remedy lies elsewhere.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 19TH DAY OF JUNE 2025.

M. A. ODENY

JUDGE

