



**Maingi v Mwenda (Environment and Land Miscellaneous Application  
E012 of 2025) [2025] KEELC 5183 (KLR) (17 June 2025) (Ruling)**

Neutral citation: [2025] KEELC 5183 (KLR)

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

**JO MBOYA, J**

**JUNE 17, 2025**

**BETWEEN**

**JOHN MWENDA MAINGI ..... APPLICANT**

**AND**

**ROBERT KATHURIMA MWENDA ..... RESPONDENT**

**RULING**

1. The Applicant herein [who was the Plaintiff in the subordinate court] has approached the court vide Notice of Motion Application dated 27<sup>th</sup> May 2025; and wherein the Applicant has sought the following reliefs:
  - i. That this Application be certified urgent and heard on priority basis.
  - ii. That this Honourable court be pleased to grant the Applicant Leave to appeal out of time against the whole judgment dated 14<sup>th</sup> March 2025 delivered by Hon. M.A Odhiambo, [SRM] at Isiolo in ELC No. 73 of 2018.
  - iii. Costs of this Application be provided for.
2. The instant application is anchored on the various grounds which have been enumerated in the body thereof. In particular, the applicant has posited that even though the Judgment was delivered on 15<sup>th</sup> March 2025, same was unable to file the intended appeal within the statutory timelines because the lower court failed to supply unto him the record of the court. Furthermore, the application is supported by the affidavit sworn by the applicant herein on the even date and wherein the applicant has reiterated the grounds in the body of the application.
3. The respondent filed a replying affidavit sworn on the 10<sup>th</sup> June 2025 and wherein the respondent has annexed one document, namely; a copy of email dispatch voucher confirming that the judgment under reference was duly disseminated to both parties by the learned trial magistrate. In this regard, it has



- been averred that the applicant was therefore privy to and knowledgeable of the terms of the judgment. Moreover, it has been averred that the instant application has been mounted with unreasonable delay.
4. The subject application came up for hearing on 17<sup>th</sup> June 2025, whereupon the advocates for the parties agreed to canvass and dispose of the application by way of oral submissions. To this end, the application was therefore heard and the oral submissions ventilated by both parties form part of the record of the court.
  5. Learned counsel for the applicant adopted the grounds at the foot of the application and thereafter reiterated the averments at the foot of the supporting affidavit. Furthermore, learned counsel thereafter highlighted two [2] issues, namely; that the application has been mounted without unreasonable delay; and that the respondent herein shall not suffer any prejudice or otherwise, if the application was to be allowed.
  6. Regarding the first issue, learned counsel for the applicant submitted that the applicant was not availed and or supplied with the record of the court in good time and in any event before the lapse of the statutory 30 days. To the extent that the applicant was not supplied with and or availed the copies of the court record, it was contended that the applicant was therefore no able to file the appeal within 30 days.
  7. It was the further submission by the learned counsel for the applicant that the applicant was only supplied with and or availed copies of the proceedings and judgment on the 14<sup>th</sup> May 2025 and thereafter the subject application was filed on 27<sup>th</sup> May 2025.
  8. Flowing from the foregoing, learned counsel for the applicant has contended that the delay attendant to the subject matter was not inordinate. In any event, it has been posited that the delay in question was occasioned by the registry at Isiolo Law Courts.
  9. As pertains to the 2<sup>nd</sup> issue, learned counsel has submitted that the respondent herein has neither demonstrated nor shown any prejudice that same shall be disposed to suffer if the instant application were to be allowed. Moreover, it was posited that the prejudice, if any, to be suffered can be indemnified by way of costs to be paid to the respondent.
  10. Arising from the foregoing, learned counsel for the applicant therefore implored the court to find and hold that the application beforehand has been mounted without unreasonable delay and thus same ought to be allowed. In any event, learned counsel for the applicant expressed willingness to settle the costs, if any.
  11. The respondent herein adopted the contents of the replying affidavit sworn on the 10<sup>th</sup> June 2025 and thereafter highlighted two [2] issues. The issues highlighted by the respondent were, namely; that the application has been filed with unreasonable and inordinate delay, and the applicant is guilty of dishonesty.
  12. Regarding the first issue, learned counsel for the respondent has submitted that the judgment of the court was delivered on 14<sup>th</sup> March 2025 and thereafter, the trial court disseminated a typed copy of the judgment to both parties. To this end, learned counsel for the respondent has referenced a copy of the email communication attached to the replying affidavit and wherein the learned trial magistrate disseminated the judgment via email on even date [14<sup>th</sup> March 2025 at 12.02 pm].
  13. In the premises, learned counsel for the respondent has submitted that the applicant had a copy of the judgment in his custody as early as 14<sup>th</sup> March 2025 and thus same ought to have moved the court timeously and with due promptitude. In any event, it has been posited that the applicant took an inordinate time before filing the application.



14. As pertains to the 2<sup>nd</sup> issue, learned counsel for the respondent has submitted that whosoever seeks to partake of the equitable discretion of the court should approach the court in good faith, honesty and candour. However, it has been submitted that the applicant herein has attempted to mislead the court as pertains to when the judgment was availed unto him. To this end, it has been contended that the applicant is not entitled to partake of equity.
15. Having reviewed the application and the response thereto and having taken into account the oral submissions ventilated by the advocates for the respective parties, I come to the conclusion that the determination of the subject application turns on two [2] salient issues, namely; whether the application has been mounted with unreasonable and inordinate delay and if so, whether the delay has been accounted for; whether the applicant is guilty of dishonesty and lack of bona-fides.
16. Regarding the first issue, it is important to recall and reiterate that the judgment sought to be appealed against was delivered on the 14<sup>th</sup> March 2025 and thereafter, the learned magistrate disseminated a copy of the judgment to the respective advocates via email on the same date. For good measure the email communication has been annexed to the replying affidavit and same shows that the judgment was disseminated to the respective advocates at 12:02 pm.
17. It is instructive to note that the applicant herein did not file any further affidavit to deny and or controvert the contents of the email communication. Furthermore, the applicant also did not controvert the contents of the replying affidavit. To this end, there is no gainsaying that the applicant was aware of and knowledgeable of the terms of the judgment as early as 14<sup>th</sup> March 2025.
18. Suffice it to state that if the applicant was desirous to appeal, then the applicant was obliged to exercise due diligence and to ensure that the requisite steps were taken within the statutory timelines. However, it is common ground that the intended appeal was not filed and or lodged and thus the filing of the current application.
19. From the foregoing, it is important to observe that the applicant herein ought to have filed his appeal on or before the 13<sup>th</sup> April 2025. However, the appeal was not filed within that time and thus the applicant was called upon to file the instant application, if at all, timeously and without delay.
20. The question that now falls for determination is whether the duration from the 14<sup>th</sup> April to the 27<sup>th</sup> May 2025, when the application was filed, is inordinate and unreasonable. To my mind, the law does not set the minimum or the maximum duration of what constitutes unreasonable delay. Suffice it to state that even a delay of one day, if not explained, can be deemed as an inordinate delay.
21. The Court of Appeal in the case of Andrew Chemarigo vs Paul Kipkorir Kiplagat (2018) eKLR considered the import of what constitutes inordinate delay and expounded the principle in the following manner.
  - (12) The law does not set out any minimum or maximum period of delay. All it states is that any delay should be satisfactorily explained. A plausible and satisfactory explanation for delay is the key that unlocks the court's flow of discretionary favour. There has to be valid and clear reasons upon which discretion can be favourably exercisable.
22. In my humble view, the duration between the 14<sup>th</sup> of April to the 27<sup>th</sup> of May 2025 is indeed unreasonable. For good measure, it constitutes a total of 43 days from the date when the 30 days lapsed. Quite clearly, the applicant was under a duty to explain this delay. [See the holding of the Supreme Court in the Case of The County Executive Committee, Kisumu County versus The County Government of Kisumu and Others [2017]eklr on the need to isolate the entire duration of delay and thereafter to account for same]



23. Has the delay been explained? The applicant herein contends that the delay was because the lower court registry [Isiolo Law Courts] failed to supply the applicants with certified proceedings and judgment in good time. Furthermore, the applicant posits that the certified proceedings and judgment were only supplied on 14<sup>th</sup> May 2025. [See paragraph 5 of the supporting affidavit].
24. Nevertheless, having looked at the replying affidavit and the annexure thereto, what becomes apparent is that the applicant indeed had a copy of the judgment on the same date of its delivery. To this end, it is therefore important to observe that the reason being propagated by the applicant is indeed no reason. Suffice it to posit that it is a lame duck excuse replete with dishonesty.
25. Regarding the second issue, I beg to start by referencing the dicta in the case of Njoroge v Kimani (Civil Application Nai E049 of 2022) [2022] KECA 1188 (KLR) (28 October 2022) as per Mativo J.A where the learned Judge stated as hereunder;

In order to exercise its discretion whether or not to grant condonation, the court must be apprised of all the facts and circumstances relating to the delay. The applicant for condonation must therefore provide a satisfactory explanation for each period of delay. An unsatisfactory explanation for any period of delay will normally be fatal to an application, irrespective of the applicant's prospects of success.

Condonation cannot be had for the mere asking. An applicant is required to make out a case entitling him to the court's indulgence by showing sufficient cause, and giving a full, detailed and accurate account of the causes of the delay. In the end, the explanation must be reasonable enough to excuse the default.

13. Equally important is that an application for condonation must be filed without delay and/or as soon as an applicant becomes aware of the need to do so. Thus, where the applicant delays filing the application for condonation despite being aware of the need to do so, or despite being put on terms, the court may take a dim view, absent a proper and satisfactory explanation for the further delays.
26. What becomes crystal clear is that an applicant desirous to partake of the equitable discretion of the court is called upon to exhibit honesty, candour, diligence and truthfulness. In any event, where an applicant propagates a position that is wrought with falsehoods, a court of equity must not dignify such an applicant with the exercise of discretion. Furthermore, a court of law must frown upon parties who seek to propagate misrepresentations and falsehoods in an endeavor to accrue discretion.
27. To my mind, the applicant herein has been less than candid. For good measure, the applicant herein has chosen to propagate falsehoods to the court in an attempt to defraud the cause of justice. Moreover, there is no gainsaying that the contents of the supporting affidavit by the applicant amount to perjury. [See Sections 113 and 114 of the penal code cap 63 Laws of Kenya].
28. Finally, and before departing from this issue, it is imperative to draw the attention of learned counsel for the applicant and the applicant himself to the warning by the Supreme Court of Kenya in the case of Raila Odinga & others vs Ruto & others (2022) KESC.

It is our finding that?

- (a) There were no significant differences captured between the Forms 34A uploaded on the Public Portal and the physical Forms 34A delivered to Bomas that would have affected the overall outcome of the Presidential Election.



- (b) No credible evidence was presented to support the allegation that Forms 34A presented to agents differed from those uploaded to the Public Portal. The Report by the Registrar of this court confirmed the authenticity of the original forms in the sampled polling stations.
- (c) The affidavits of Celestine Anyango Opiyo and Arnold Ochieng Oginga, while containing sensational information, were not credible as the Registrar's Report confirmed that all the Forms 34A attached to those affidavits and purportedly given to them by agents at select polling stations were significantly different from the originals, certified copies and those on the Public Portal. The purported evidence of Celestine Opiyo and Arnold Oginga sworn in their respective affidavits was not only inadmissible, but are also unacceptable. It has been established that none of the agents on whose behalf the forms were being presented swore any affidavit; that there is nothing to show that they had instructed both Celestine Opiyo and Arnold Oginga to act for them. Yet the two have gone ahead to depone on matters that are not within their knowledge.
- (d) This court cannot countenance this type of conduct on the part of counsel who are officers of the court. Though it is elementary learning, it bears repeating that affidavits filed in court must deal only with facts which a deponent can prove of his own knowledge and as a general rule, counsel are not permitted to swear affidavits on behalf of their clients in contentious matters, like the one before us, because they run the risk of unknowingly swearing to falsehoods and may also be liable to cross-examination to prove the matters deponed. We must remind counsel who appear before this court, or indeed before any other court, or tribunal of the provisions of Sections 113 and 114 of the *Penal Code*, that swearing to falsehoods is a criminal offence, and too that it is an offence to present misleading or fabricated evidence in any judicial proceedings.
- (e) Section 114 of the *Penal Code* states that: "Any person who swears falsely or makes a false affirmation or declaration before any person authorised to administer an oath or a declaration upon a matter of public concern, and at such circumstances that the false swearing or declaration if committed in a judicial proceeding would have amounted to perjury, is guilty of a misdemeanour." One of the most serious losses an advocate may ever suffer is the loss of trust of Judges for a long time. Such conduct amounts to interference with the proper administration of justice. [Emphasis Supplied]

29. I beg to adopt and reiterate the warning sounded by the apex court. Perhaps time is nigh for courts of law to put their feet down and to invoke the import of section 114 of the penal code and have perpetrators of falsehoods dance to the music attendant to the commission of perjury.

30. I say no more.

### **FINAL DISPOSITION**

31. Having reviewed and analyzed the two [2] thematic issues contained in the body of the ruling, I come to the conclusion that the application beforehand is not only misconceived, but same constitutes an abuse of the due process of the court.



32. In the premises, the final orders of the court are as hereunder;
- i. The application dated 27<sup>th</sup> May 2025 be and is hereby Dismissed.
  - ii. Costs of the Application are hereby awarded to the Respondent.
  - iii. The Costs in terms of clause [II] shall be agreed upon and in default, taxed by the Deputy Registrar in the conventional manner.
33. It is so ordered.

**DATED, SIGNED AND DELIVERED AT ISIOLO THIS 17<sup>TH</sup> DAY OF JUNE 2025**

**OGUTTU MBOYA, FCI Arb; CPM [MTI].**

**JUDGE**

In the presence of:

Mr. Mutuma- Court Assistant.

Miss Gumato holding brief for Mr. Murango Mwenda for the Applicant

Mr. Mwirigi Kaburu for the Respondent

