



**Maragia v Maosa & another (Environment & Land Miscellaneous Case
E029 of 2024) [2025] KEELC 4602 (KLR) (17 June 2025) (Ruling)**

Neutral citation: [2025] KEELC 4602 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISII
ENVIRONMENT & LAND MISCELLANEOUS CASE E029 OF 2024**

**M SILA, J
JUNE 17, 2025**

BETWEEN

SOLOMON NYAGWOKA MARAGIA APPLICANT

AND

DAVIES MOTURI MAOSA 1ST RESPONDENT

JOYCE BOCHE 2ND RESPONDENT

RULING

(Application seeking leave to appeal out of time; no affidavit by the litigant but affidavit filed is only that of counsel; in the circumstances it cannot be said that the litigant has filed any application for leave to appeal out of time; application incompetent and is struck out with costs)

1. The application before me is that dated 20 December 2024. It seeks orders for leave to be granted to the applicant to file appeal out of time arising from a judgment delivered on 9 September 2024. The application is opposed by the 1st respondent.
2. Although the applicant is said to be one Solomon Nyagwoka Maragai, and in the body of the application, it is stated that the application is supported by his affidavit, what I have seen in support of the application is an affidavit sworn by Anyona A. Mbunde who is counsel on record for the applicant. In the affidavit he has deposed inter alia that “I am the applicant in this case on behalf of the plaintiff/ applicant and conversant with all issues and facts surrounding this case hence competent to swear this affidavit.” He has continued to depose that when the judgment was delivered he was unwell hence the delay. He has deposed that the plaintiffs (sic) gave him instructions to appeal against the judgment. He adds that his predicament cannot be visited on the litigant who does not know the timelines for making an appeal. He believes that the intended appeal raises pertinent issues that are likely to overturn the judgment.



3. The 1st respondent swore a replying affidavit to oppose the motion. He has deposed inter alia that the judgment was delivered on 9 September 2024 yet this application has been filed over three months later. I have seen a deposition that the delay is attributed to bereavement and financial constraints but clearly this is not what is in the supporting affidavit. I wonder if it is a case of cut and paste gone awry. Be that as it may, it is added that the applicant is guilty of laches and there is no arguable appeal.
4. The 2nd respondent did not oppose the motion.
5. Mr. Anyona, learned counsel for the applicant relied on the supporting affidavit to urge the motion. Mr. Ochoki, learned counsel for the 1st respondent, filed written submissions. I have considered the application.
6. I am not persuaded to allow the application for one very simple reason. I actually have no application before me by Solomon Nyagwoka Maragia, seeking to appeal out of time. If Solomon Nyagwoka Maragia wants to appeal out of time, I would expect to have an affidavit from him, requesting the court to allow him to appeal out of time. I have no such affidavit. What I have is an affidavit of counsel, but counsel is not the litigant. It is a litigant who seeks leave from court, not counsel. In this instance, we cannot say that Solomon Nyagwoka Maragia has asked court for leave to appeal out of time, for reason that he has sworn no affidavit seeking such an order. This is not the type of application which counsel is at liberty to swear on behalf of his client. Counsel could swear an additional affidavit to buttress what his client has said seeking leave, but without the client swearing and filing an affidavit, it cannot be asserted that there is an application filed by him. I mentioned that it is said in the body of the application that the application is supported by the affidavit of Solomon Nyagwoka Maragia, but there is no such affidavit. Without it, I am afraid that I do not have an application by such person seeking leave to appeal out of time. It has been said time without number that counsel need to be careful on what affidavit they are swearing in litigation and this is one such instance.
7. Given the foregoing I need not even consider the merits or demerits of the application.
8. There is no substratum in this application and it is struck out with costs.
9. Orders accordingly.

DATED AND DELIVERED THIS 17 DAY OF JUNE, 2025

JUSTICE MUNYAO SILA

JUDGE, ENVIRONMENT AND LAND COURT

AT KISII

Delivered in the presence of :

Mr. Anyona for the applicant

Mr. Ochoki for the 1st respondent

Mr. Masolo for the 2nd respondent

Court Assistant – Michael Oyuko

