



REPUBLIC OF KENYA



**KENYA LAW**  
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**M'Minyori v Mutiga (Miscellaneous Application E025 of 2025)  
[2025] KEELC 4738 (KLR) (17 June 2025) (Ruling)**

Neutral citation: [2025] KEELC 4738 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MERU  
MISCELLANEOUS APPLICATION E025 OF 2025**

**JO MBOYA, J  
JUNE 17, 2025**

**BETWEEN**

**SALESIO MIRITI M'MINYORI ..... APPLICANT**

**AND**

**ALEX MUNJURI MUTIGA ..... RESPONDENT**

**RULING**

1. The Applicant herein (who was the Plaintiff in the subordinate court) has approached the court vide Notice of Motion Application dated 15<sup>th</sup> May 2025; and wherein the Applicant seeks the following reliefs:
  - i. The Application be certified urgent in the first instance.
  - ii. That the Honourable court do extend time to file appeal out of time.
  - iii. That costs be in the cause.
2. The instant application is premised on the various grounds which have been highlighted in the body thereof. Furthermore, the application is supported by the affidavit of the applicant sworn on even date and to which the applicant has annexed inter alia a copy of the judgment sought to be appealed against together with the ruling rendered on the 6<sup>th</sup> May 2025. For good measure, the ruling under reference relates to an application for review which was dismissed.
3. Though served with the application, the Respondent herein neither filed any replying affidavit nor grounds of opposition. Suffice it to state that the application was basically (de-facto) unopposed.
4. Nevertheless, the application came up for hearing on the 17<sup>th</sup> June 2025, whereupon the advocate for the applicant intimated to the court that same would be adopting the grounds contained in the body of the application. In addition, the advocate posited that same would also be relying on the contents of the supporting affidavit.



5. Arising from the foregoing, learned counsel for the applicant implored the court to find and hold that the application beforehand is meritorious. Simply put, the applicant invited the court to allow the application and to grant leave/extend time for the purposes of filing an appeal.
6. Having considered the application beforehand and having taken into account the applicable law, I come to the conclusion that the determination of the subject application turns on three (3) key issues, namely; whether the court has jurisdiction to extend time to file an appeal out of time as pertains to a judgment which has previously been challenged vide review; whether the application has been mounted with unreasonable and inordinate delay; and whether the application constitutes an abuse of the due process of the court or otherwise.
7. Regarding the first issue, it is imperative to recall and reiterate that the applicant herein filed the original suit in the subordinate court and which suit was heard and determined vide Judgment rendered on 5<sup>th</sup> March 2024. Notably, the subordinate court found and held that the applicants claim was devoid of merits and the suit was dismissed. Following the dismissal of the suit, the applicant herein felt aggrieved and thereafter filed an application for review. For good measure, the application for review was underpinned by the provisions of Order 45 Rule (1) of the *Civil Procedure Rules*.
8. It is instructive to note that the application for review was heard and disposed of vide ruling rendered on 6<sup>th</sup> May 2025; when the application was dismissed. In the course of dismissing the application for review, the learned magistrate stated as hereunder;

“ Further to this, the court clearly indicated that parcel numbers 179 and 1792 emanated from the same parcel of land. The court was cognizance of this fact and a substantive judgment was delivered. Consequently, this court is for the view that the application has failed to meet the threshold of review and the only recourse of the aggrieved party is to appeal”.
9. Following the dismissal of the application for review, the applicant herein was at liberty to file an appeal against the ruling on review. Nevertheless, having previously filed an application for review as against the judgment, the applicant herein cannot be heard to contend that same can mount / prefer an appeal against the same Judgment that has hitherto been challenged by way of Review. To my mind, the applicant had a right to either appeal against the judgment or review. However, having chosen to seek review, the applicant herein lost the rights to pursue an appeal against the said Judgment.
10. To the extent that the applicant had chosen to pursue review and which path the applicant walked to conclusion, same (Applicant) forfeited his right to appeal against the Judgment. In this regard, I hold the humble view that this court is not seized of the requisite jurisdiction to grant leave or extension of time for purposes of filing (sic) the intended appeal.
11. The fact that a party cannot pursue both an appeal and review in respect of the same judgment is well highlighted at the foot of Order 45 Rule (1) of the *Civil Procedure Rules, 2010*. Furthermore, the legal position that one cannot seek to appeal a judgment long after the review has been declined was also expounded by the Court of Appeal in the case of *Otieno, Ragot & Company Advocates v National Bank of Kenya Limited* (2020) KECA 894 (KLR) and *Multichoice (Kenya) Ltd v Wananchi Group (Kenya) Limited & 2 others* (2020) eKLR.
12. To the extent that no appeal can be mounted against a judgment long after an application for a review has been dismissed, it then follows that no leave can be granted for purposes of filing such an appeal. Quite clearly, the grant of leave and or extension of time in the manner sought would be antithetical to the rule of law.



13. Regarding the second issue, namely, whether the application has been made and or mounted with unreasonable delay, it is instructive to observe that the judgment which is sought to be challenged was rendered on the 5<sup>th</sup> March 2024. In this regard, if the applicant was keen to appeal, same ought to have moved the court within 30 days from the date of delivery of the said Judgment. (See Section 79 of the [Civil Procedure Act](#), Chapter 21, Laws of Kenya).
14. However, where an applicant does not file the intended appeal within the prescribed timelines, then it behooves such an applicant to approach the court with an application for extension of time without undue delay. In any event, where there is some semblance of delay, it is incumbent upon the applicant to isolate the duration of delay and thereafter account for same. (See the [County Executive of Kisumu v County Government of Kisumu & 8 others](#), SC. Civil Appl. No 3 of 2016; (2017) eKLR, See also [Andrew Chemaringo v Paul Kipkorir Kiplagat](#) (2018) eKLR).
15. Taking into account the time lapse between the 5<sup>th</sup> March 2024 when the Judgment was delivered and contrasting same with the timeline when the application was filed, what becomes apparent is that the application has been mounted after more than 14 months. Consequently, the question that does arise is whether the 14-month duration is unreasonable or otherwise.
16. It is not lost on this court that the law does not prescribe a minimum or maximum period/ duration that constitute(s) unreasonable delay. Nevertheless, there is no gainsaying that 14 months duration is by and of itself grossly unreasonable and thus inordinate.
17. Be that as it may, it is also important to observe that even where the duration is unreasonable, where the applicant avails explanation and or accounts for the delay to the satisfaction of the court, the court may very well be persuaded to exercise discretion.
18. Has the applicant accounted for the delay or otherwise? To my mind, the only reason being espoused by the applicant is that same had filed an application for review and which application was dismissed. In this regard, the applicant is now seeking to have a second bite on the cherry. Certainly, what the applicant is doing is actually chancing to see whether same can get a favourable outcome and gambling with the due process of the court.
19. In my considered view, the reason(s) and or explanation(s) to be availed must be credible, plausible and cogent. Simply put, it is not just any other excuse. Worse still, an excuse that borders on abuse of the court process cannot be deemed to constitute (sic) sufficient explanation. (See [Wachira Kimani v Bildad Wachira](#) (2016) eKLR).
20. Lastly, as pertains to the final issue, it is worthy to recall that the learned trial magistrate dismissed an application for review. In the course of crafting the ruling, the learned magistrate made an obiter proclamation that the issues raised at the foot of the application for review could only have been canvassed vide appeal; and not otherwise.
21. It appears that the applicant herein is riding on the said observation and now same seeks to procure leave/extension of time to appeal. Quite clearly, the applicant is misusing, nay abusing the due process of the court.
22. Additionally, there is no gainsaying that the applicant herein could only file an appeal against the impugned judgment or deploy review. Nevertheless, the moment the applicant chose one avenue, the other avenue stood extinguished. In this regard, the applicant cannot now seek to pursue an appeal. Consequently, any endeavor to pursue an appeal would by and of itself, amount to abuse of the due process of the court.



23. This kind of endeavour cannot be countenanced and/ or sanctioned by a conscientious court of law. In any event, such conduct like the one beforehand is tantamount to playing lottery; or better still, the game of poker with the due process of the Court.
24. The concept of abuse of the due process of the court has received considerable judicial pronouncements. Nevertheless, it suffices to reference the decision of the Supreme Court (the apex Court) in the case of *Rutongot Farm Ltd v Kenya Forest Service & 3 others* (Petition 2 of 2016) (2018) KESC 27 (KLR) (19 September 2018) where the court stated and held thus;

In *Kenya Section of the International Commission of Jurists v Attorney General & 2 others* Criminal Appeal No 1 of 2012; (2012)eKLR, this Court, on the issue of abuse of the process of the Court, held inter alia:

““The concept of “abuse of the process of the Court” bears no fixed meaning, but has to do with the motives behind the guilty party’s actions; and with a perceived attempt to manoeuvre the Court’s jurisdiction in a manner incompatible with the goals of justice. The bottom line in a case of abuse of Court process is that, it “appears so hopeless that it plainly and obviously discloses no reasonable cause of action and is so weak to be beyond redemption...”

Beyond that threshold, lies an unlimited range of conduct by a party that may more clearly point to an instance of abuse of Court process.”

25. To my mind, the excerpt cited in the preceding paragraph aptly describes the endeavor by the current applicant. To this end, this court must not be seen to sanitize any process that is contrary to the interests of justice and the rule of law.
26. In a nutshell, I also find and hold that the application beforehand constitutes and amounts to an abuse of the due process of the court. (See also *Muchanga Investments Ltd v Safaris Africa (unlimited) Ltd* (2009) eKLR; and *Satya Bharna v Director of Public Prosecution* (2019)eKLR).

#### **Final Disposition:**

27. Having considered and analysed the issues which were highlighted in the body of the ruling, it must have become apparent, may evident that the instant application is not only premature and misconceived, but same also constitutes an abuse of the due process of the court.
28. In the premises, the final orders of the court are as hereunder;
- I. The application dated 15<sup>th</sup> May 2025 be and is hereby dismissed.
  - II. No orders as to costs.
29. It is so ordered.

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

**OGUTTU MBOYA, FCIArb; CPM (MTI-EA).**

**JUDGE**

**IN THE PRESENCE OF**

**MR. MUTUMA- COURT ASSISTANT.**

Mr. Nyaga holding brief for Mr. Joshua Mwiti for the Applicant



No appearance for the respondent.

