



Munyao v Muoka & another; DCI - Matungulu Sub Location (Interested Party) (Environment and Land Miscellaneous Case E036 of 2023) [2025] KEELC 6462 (KLR) (30 September 2025) (Ruling)

Neutral citation: [2025] KEELC 6462 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ENVIRONMENT AND LAND MISCELLANEOUS CASE E036 OF 2023
AY KOROSS, J
SEPTEMBER 30, 2025

BETWEEN

BONIFACE NZIOKA MUNYAO APPLICANT

AND

JENNIFER NDUNGE MUOKA 1ST RESPONDENT

DANIEL MUOKA MWALABU 2ND RESPONDENT

AND

DCI - MATUNGULU SUB LOCATION INTERESTED PARTY

RULING

1. This is a ruling in respect of a chamber summons dated 14/11/2023 filed by the applicant, expressed to have been moved within the provisions of Sections 3A, 75, 78 and 79G of the *Civil Procedure Act* and Order 42 Rule 1 (3) of the *Civil Procedure Rules*, and all other enabling provisions of the law. The applicant seeks the following reliefs from this court: -
 - a. Spent.
 - b. The court be pleased to grant leave to the applicant to appeal out of time against the judgment made by the Hon. Daffline Nyaboke Sure, Principal Magistrate in Kangundo ELC No. E038 of 2021 on 28/08/2023, and that the memorandum of appeal herein dated 9/11//2023, be deemed as duly filed and served upon the respondents.
 - c. The costs of this application be provided for.
 - d. Any other orders that meet the ends of justice.



2. However, before this court proceeds further, it deems it necessary to mention that the applicant moved this court by way of a chamber summons instead of a notice of motion and relied on some inapplicable legal provisions in moving this court; nonetheless, this is a technical issue that does not go to the root of the issue for determination.
3. The motion is supported by several grounds on the face thereof and the supporting affidavit of the applicant, deposed on the instant date. In a nutshell, the grounds in support of the motion are that: a) he is aggrieved by the judgment in Kangundo ELC No. E038 of 2021 which was rendered on 28/08/2023, b) he has been experiencing medical challenges, which made it very difficult for him to issue appropriate instructions to his advocates to lodge the appeal within the requisite timelines, c) it is in the interest of justice if he is granted leave to appeal out of time, and, d) the respondents will not be prejudiced in any way if the said leave is granted.
4. In opposition, the 1st respondent filed a replying affidavit deposed on 15/03/2024 and in brief, asserted that; a) the trial court delivered its judgment on the 28/8/2023 in the presence of the applicant's advocate which atomically means that by dint of his representation, he knew of the outcome of the case that very date when it was delivered and, b) if at all the appeal was of great importance to the applicant, then great care and attention ought to have been taken to ensure that it is filed within the time frame provided for by the law and the rules of procedure.
5. In a brief rejoinder, the applicant swore a further affidavit dated 31/05/2024, where in summary he maintained *inter alia*: a) although he knew the outcome of the case the very date it was rendered, there is no way his advocates on record could have proceeded to file an appeal without his instructions, and, b) there is no evidence that the motion was made in bad faith and wholly devoid of merit.
6. As directed by the court, submissions were received by this court from the law firms of Mss. Calistus & Co. Advocates for the applicant, dated 24/09/2024, and Nzuki Nzioka & Co. Advocates for the 1st and 2nd respondents, dated 23/10/2024. Accordingly, the counsels' arguments shall be taken into consideration in the analysis and determination of the issue at hand, which is whether the application has met the legal threshold to warrant the grant of leave to appeal out of time. Additionally, careful thought will be given to the motion, its grounds, and affidavits.
7. Reverting to the issue before us, Section 79G of the [Civil Procedure Act](#) as read together with the provisions of Section 95 of the [Civil Procedure Act](#), Section 16A (2) of the [Environment and Land Court Act](#) and Order 50 Rule 6 of the [Civil Procedure Rules](#), empowers this court to admit an out of time and/or extend the time for filing an appeal if the statutory period of 30 days for filing one against a decree or order has lapsed for as long as the court satisfies itself that an applicant has good and sufficient cause for not filing the appeal in time.
8. As submitted by both counsels and rightfully so, in considering applications such as this, the court exercises unfettered discretion based on the law, reason and evidence. In line with this, non-exhaustive legal principles have been established that usually guide courts in the exercise of such discretion, and a case in point is the Court of Appeal decision of [Edith Gichugu Koine v Stephen Njagi Thoithi](#) [2014] KECA 485 (KLR) that has been relied upon by the applicant, where the court stated: -

“Nevertheless, it ought to be guided by consideration of factors stated in many previous decisions of this Court including, but not limited to, the period of delay, the reasons for the delay, the degree of prejudice to the respondent if the application is granted, and whether the matter raises issues of public importance, amongst others – See Fakir Mohamed V Joseph Mugambi & 2 Others, Civil Application Nai. 332 of 2004 (unreported). There is also a duty now imposed on the Court under sections 3A and 3B of the [Appellate Jurisdiction Act](#)



to ensure that the factors considered are consonant with the overriding objective of civil litigation, that is to say, the just, expeditious, proportionate and affordable resolution of disputes before the Court.”

9. Significantly, though this court agrees with the 1st and 2nd respondents’ counsel’s arguments that timelines are set for purposes of achieving timely dispensation of justice, predictability and uniformity and equality of arms meant for all the parties, as held in the Court of Appeal decision of *Hilda Kaari Mwendwa v Zakayo M. Magara & 2 others* [2016] KECA 770 (KLR) which counsel relied on, this same decision affirmed the settled principles in entertaining applications of this nature such as cogent explanation for the delay by the party in default.
10. In addition, this court must also consider its principal objective of facilitating the just, expeditious, proportionate, and accessible resolution of disputes as provided for in Section 3 of the *Environment and Land Court Act*.
11. Accordingly, the question that arises is whether the applicant has advanced satisfactory reasons and extenuating conditions that can enable this court to exercise its discretion in his favour. In answering this, one has to bear in mind that the circumstances of each case are unique, as even a singular day could be tantamount to delay; hence, each case has to be considered on its own set of conditions.
12. On the test of delay, the impugned judgment was rendered on 28/08/2023, and the instant motion was filed on 1/12/2023, a period of close to 3months. Hence, there was a delay.
13. To explain these months away, the applicant availed a medical report dated 31/10/2023 from Kangundo Level IV Hospital, which details the nature of the applicant’s illness and a follow-up thereof from 29/08/2023. This report has not been challenged by the respondents, meaning that it is truthful. For confidentiality, and without delving much into the applicant’s illness, there is no doubt that by the very nature of his illness, which befell him a day after the impugned judgment was rendered, it is highly probable that he was totally incapacitated from giving his counsel instructions. It follows that this court has no reason to doubt the applicant.
14. It is worth noting that the applicant has tendered a draft memorandum of appeal, which this court has taken into account, and, being aware that the pronouncements made at this stage of the proceedings should not delve profoundly into the merits of the appeal, this court is satisfied that the intended appeal is not frivolous.
15. Ultimately, and for the foregoing reasons, this court is persuaded that the applicant deserves the exercise of this court’s discretion in his favour and finds the application dated 14/11/2023 is merited and it is allowed in the following terms: -
 - a. Leave to file an appeal out of time is hereby granted, and the appeal shall be filed and served within 14 days from the date of this ruling.
 - b. Failure to comply with the order (a) above shall lead to the automatic vacation of the order.
 - c. Costs of the motion shall abide by the outcome of the appeal.
 - d. The file is hereby marked as closed.

It is so ordered.

DELIVERED AND DATED AT MACHAKOS THIS 30TH DAY OF SEPTEMBER, 2025.

HON. A. Y. KOROSS



JUDGE

30.09.2025

Ruling delivered virtually through Microsoft Teams Video Conferencing Platform

In the presence of;

Mr. Ojiambo for Applicant.

Mr. Nzioka for respondent.

Ms Kanja- Court Assistant.

