



**Mugo v Njeri (Miscellaneous Application E009 of 2025)
[2025] KEELC 6272 (KLR) (24 September 2025) (Ruling)**

Neutral citation: [2025] KEELC 6272 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA
MISCELLANEOUS APPLICATION E009 OF 2025
JM MUTUNGI, J
SEPTEMBER 24, 2025**

BETWEEN

JOYCE NDUTA MUGO APPLICANT

AND

JEAN NJERI RESPONDENT

RULING

1. The Applicant vide a Notice of Motion application dated 4th April 2025 prays for an extension of time to file an Appeal out of time and at the same time prays for a temporary injunction to restrain the Respondent from in any manner interfering with the access road to the Applicant's land parcel number LR No. Kutus/Township/122 pending the hearing and determination of the Intended Appeal.
2. The Applicant avers that the Judgment before the trial Court was delivered on 13th September, 2023 without any notification to the parties and/or attendance of the parties. The Applicant avers that the trial Magistrate had been transferred from the Court Station and therefore follow up was impeded. The Applicant in the Supporting Affidavit at paragraph 5 depones thus:-
 5. That I only came to learn of the Judgment in late September when I followed up with our Lawyer and at the registry. It's then we learnt that both our case and the Respondents. Counterclaim were dismissed on 9th April 2020.
3. From the above it is not clear when the Applicant learnt of delivery of the Judgment noting that the instant application dated 4th April, 2025 was filed on 7th April 2025. The Judgment it is clear was delivered in the absence of the parties on 13th September 2023 and presumably the file was returned to the Registry then. When the Applicant depones she learnt of the delivery of the Judgment in late September does she mean September 2023 or which September? Be it as it may be, she filed the application in April 2025 and even if she learnt of the delivery of the judgment in September 2024, it took her over 6 months to file the application. Why the delay? In the grounds in support of the



application, the Applicant avers that she learnt of the Judgment in September 2024, yet in the Affidavit in support of the application she gives no explanation for the delay of over six months in filing the application for extension of time.

4. . In the instant matter the Applicant seeks the Court's exercise of discretion in her favour to extend time to file an Appeal. The exercise of a Court's discretion is dependent upon an Applicant laying a basis for the exercise of the discretion in their favour as the discretion has to be exercised judiciously and not whimsically or capriciously. The Supreme Court in the case of [*Nicholas Kiptoo Arap Salat v I.E.B.C & 7 others*](#) (2014) eKLR laid down the principles that a Court ought to consider in an application to extend time as follows:-

1. Extension of time is not a right of a party. It is an equitable remedy that is only available to a deserving party at the discretion of the Court.
2. A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the Court;
3. Whether a Court should exercise the discretion to extend time, is a consideration to be made on a case to case basis;
4. Whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the Court.
5. Whether there will be any prejudice suffered by the Respondents if the extension is granted.
6. Whether the application has been brought without undue delay; and
7. Whether in certain cases, like election petitions, public interest should be a consideration for extending time.

5. In opposing the Applicant's application the Respondent filed a Replying Affidavit where she averred that the application had been brought after inordinate delay and the delay was unexplained which disentitled the Applicant to the orders sought in the application. The Respondent averred that the Court in its Judgment had directed the County Government to provide an access road, to the Applicant's plot and thus the question of encroachment onto the Applicant's plot could not arise.

6. In the instant application, the primary issue for determination is whether the Applicant has satisfied the principles upon which the Court may exercise its discretion to extend time for an Appeal to be filed out of time and further whether an order for temporary injunction is merited. Section 79G of the [*Civil Procedure Act*](#) provides as follows:-

79G Every Appeal from a Subordinate Court to the High Court shall be filed within a period of thirty days from the date of the decree or order appealed against, excluding from such period any time which the Lower Court may certify as having been requisite for the preparation and delivery to the Appellant of a copy of the decree or order:

Provided that an appeal may be admitted out of time if the Appellant satisfies the Court that he had good and sufficient cause for not filing the Appeal in time.

7. The Court has to be satisfied as to the reasons for the delay in filing the Appeal. In the instant case, though the Judgment may have been delivered in the absence of the parties, the Applicant became aware of the Judgment in September, 2024. There is no explanation why the application for time extension was not made immediately and the Applicant waited for six months to make the application. The Court finds that the application was made after an inordinate delay which was inexcusable. The



Court is of the view that the matter before the Lower Court was more concerned about the delineation of the boundaries of land parcels LR Kutus/Township/122 and LR Kabare/Nyangati/9711 and whether the two parcels of land were serviced by an access road. Under the provisions of Section 18 and 19 of the *Land Registration Act*, 2012, the Land Registrar acting in concert with the Surveyor ought to have been in a position to establish the parcel boundaries and the access road if there was one. In the premises, I am not persuaded the Applicant has a meritorious Appeal.

8. In the circumstances, I hold the Applicant's application dated 4th April 2025 lacks merit and the same is ordered dismissed with costs to the Respondent.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT KERUGOYA THIS 24TH DAY OF SEPTEMBER 2025.

J. M. MUTUNGI

ELC - JUDGE

