



REPUBLIC OF KENYA



Parningu alias Nareyio Paapai v Kononkoi & 2 others (Environment and Land Miscellaneous Case E003 of 2025) [2025] KEELC 6206 (KLR) (25 September 2025) (Ruling)

Neutral citation: [2025] KEELC 6206 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KILGORIS
ENVIRONMENT AND LAND MISCELLANEOUS CASE E003 OF 2025
MN MWANYALE, J
SEPTEMBER 25, 2025**

BETWEEN

NAREYIO PARNINGU ALIAS NAREYIO PAAPAI APPLICANT

AND

DAVID KONONKOI 1ST RESPONDENT

MICHAEL TOMITO NAMPASO 2ND RESPONDENT

KILGORIS LAND REGISTRAR 3RD RESPONDENT

RULING

1. This Ruling is in respect of the Notice of Motion applicable dated 2nd April 2025, which seeks leave for an appeal to be filed out of time in respect of the judgment delivered on 25th April 2024 in Kilgoris CME&L NO. E030 of 2023 between Nareyio Parningu and David Kononkoi and 2 Others.
2. The Application further seeks a temporary injunction pending determination of the intended Appeal.
3. The grounds in support of the application are interalia, that;
 - i. The Applicant had preferred an Appeal against the said judgment which appeal, Kilgoris ELCLA No. E013/2024 was struck out on 4th February 2025 for offending order 9 Rule 9 of the *Civil Procedure Rules*, for the Appeal had been filed without the firm of TLB Tuyia obtaining consent from the previous Advocates Ms. Kimanga & Co. Advocates.
 - ii. That the Applicant is desirous to have his Appeal heard on its merits being aggrieved by the lower court decision; and the Applicants Advocate genuine excusable mistake should not be visited on the litigant.



4. The Application is supported by the supporting affidavit of Leteipa Tuyia who deposes and reiterates the ground in support of the application and has exhibited a copy of the impugned judgment and a draft Memorandum of Appeal.
5. The 3rd Respondent being the Kilgoris Land Registrar is not opposed to the application but the 1st and 2nd Respondents filed a Replying affidavit deposed by the 1st Respondent but with the authority of the 2nd Respondent and they oppose the application.
6. It is their deposition inter alia that; -
 - i. The request for the firm of TLB Tuyia to come on record in place of Kimanga Advocates is unfounded as in the miscellaneous Application.
 - ii. That the Applicant herein Nareyio Parningu alias Nareyo Paapai, is a different person from Nareyio Parnignu who had sued in the lower court.
 - iii. That the miscellaneous application is not a suit capable of issuing injunctive orders. The misc. Application is anchored on L.R No. Transmara/Olomismis/816 and the Applicant is not the registered owner.
7. The parties filed submissions in respect of the application summarized as herefollows; -

Applicant's submission

8. The Applicant submitted on 4 issues for determination
 - i. In respect of issue No. 1, the Applicant submitted that the firm of Kimanga Advocates were not opposed to them proceeding with the appeal hence the court ought to allow prayer No. 1.
 - ii. On issue No. 2, the Applicant relies on Section 79(G) of the *Civil Procedure Act*, the proviso thereto empowers the court to admit an appeal filed out of time once good and sufficient cause has been shown.
 - iii. The Applicant places reliance on the decision in the case of *Nicholas Kiptoo Korir Arap Salat vs. IEBC and 2 Others* (2014) eKLR on the principles of extension of time.
 - iv. The Applicant submits that there will be no prejudice to the Respondent should the court grant leave for the Applicant to file an appeal out of time; and that the Applicant have an arguable Appeal.
9. On the strength of the above Applicant beseechs the court to allow the application.

Respondent's Submission

10. The 1st and 2nd Respondents on their part submit that the prayer for injunction is still born having been made in a Miscellaneous Civil application and not in a substantive suit.
11. The Respondents further submit the instant application seeking leave is different from Kilgoris CM ELC No. E30 of 2023.
12. From the application, it is common between the parties, that there was a previous appeal filed against the decision in Kilgoris CM ELC No. E30 of 2023, but the said appeal was struck out as the Appeal was filed by a stranger, the Advocates having not obtained leave to come on record after judgment.
13. The court frames the following as the issues for determination.



- i. Whether or not the application is merited, and in determining this, the court shall look at whether to grant leave to appeal out of time?
- ii. What reliefs ought to issue.
- iii. Who bears the costs of the application.

Analysis and Determination

14. The first prayer in the Application is that it seeks leave for the firm of TLB Tuyia Advocates that had previously been on record on behalf of the Applicant in the suit before the lower court.
15. The application was served upon Messrs Kimanga & Co. Advocates and they did not file a Response in respect of the said application.
16. Consequently, in terms of prayer No. 1 the same is not opposed by the outgoing Advocates.
17. The court of Appeal had occasioned to determine whether leave ought to be sought for an Advocate to come on record after judgment in an appeal; and settled the issue in its decision in the case of *Tobias M. Wafubwa vs. Ben Butali* 2017 (eKLR), where it was observed inter alia that an appeal is a new proceeding hence parties should therefore have a right to choose whether to remain with the same counsel or not.
18. The court held inter alia, “we are of the same view and would adopt the same approach in its entirety in matters concerning appeals, once a judgment is entered save for matters such as applications for review or execution is entered, inter alia, An appeal to an Appellate court is not a continuation of proceedings in the lower court but a commencement of new proceedings in another court where different rules may be applicable for instance, the court of Appeal Rule 2010 and Supreme court Rules 2010 parties should therefore have the right to choose whether to remain with the same counsel or to engage another counsel on appeal without being required to file a Notice of change of Advocates or to obtain leave from the concerned court to be placed on record in substitution of the previous Advocates...”
19. In view of the legal position as expounded above, the prayer to come on record is not necessary but having been made with no objection from the outgoing counsel, then the same is allowed.
20. The principles of extension of time to file an appeal was laid down in the decision in the case of *Leo Silla Mutiso vs. Rose Hellen Wangari*, and restated in the decision in the case *Nicholas Korir Salat vs. Independent Electoral and Boundaries Commission* where the court held inter alia; -

“A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the court.

Whether the court should exercise the discretion to extend time, is a consideration to be made on a case-by-case basis;

Whether there is a reasonable reason for to delay, the delay should be explained to the satisfaction of the court, whether there will be any prejudice suffered by the respondent if the extension is granted, whether the application has been brought without undue delay...”
21. Applying the principles to the instant case, the Applicant had filed an appeal timeously which appeal was struck out hence the present application. The impugned Judgment was delivered in April, 2024 the striking out in February 2025 and the Application herein filed April 2025.



22. There was a delay of about one year after the judgment and 2 months after striking out of the Appeal. That delay is not inordinate, noting that the Applicant had preferred an appeal which was struck out as explained at paragraph 12 of this Ruling.
23. The Applicant has offered an explanation in respect of the delay, which explanation has not been controverted and is factual. The Respondent did not depose the prejudice that they would suffer if time was extended to file the Appeal.
24. In respect of the prayer for extension, the court finds that the same has been justified. The court agrees with the submission of the Respondents in respect of the prayer for temporary injunction having been made in a vacuum, there being no substantive suit herein.
25. The court thus finds that the application is merited.
26. On the second issue of what reliefs ought to be granted.
27. The Applicant having demonstrated merits in the application, the Application is allowed in terms of prayers 2 and 3. The prayer for temporary injunction is declined but in order to preserve the suit property, an order of maintenance of the prevailing status quo is hereby issued. Status quo on the ground to mean the current occupants to remain in possession while status quo on the register of the suit property to remain the current registered owner pending hearing and determination of the intended Appeal. The order for maintenance of status quo is made pursuant to practice direction 28K gazette vide Gazette Notice 5178/2014 which empowers the court to issue status quo orders so as to preserve a suit property.
28. The Applicant to file and serve the Memorandum of Appeal within 14 days, and file the record of Appeal within 30 days from date of this Ruling.
29. Costs of the application are awarded to the 1st and 2nd Respondents.
30. Orders accordingly.

DATED AT KILGORIS THIS 25TH DAY OF SEPTEMBER, 2025.

HON. M.N MWANYALE

JUDGE

In the presence of

CA – Emmanuel/Sylvia/Sandra

Mr. Tuyia for the Applicant

Mr. Ochwangi for 1st and 2nd Respondent

