

IN THE COURT OF
APPEAL AT NAKURU
(CORAM: WARSAME, J.A. IN
CHAMBERS) CIVIL APPLICATION NO.
E087 OF 2025 BETWEEN

RESOLUTERISE COMMUNITY BASED ORGANISATION. .APPLICANT

AND

LIVINGSTONE KUNINI NTUTU.....1ST

RESPONDENT COUNTY GOVERNMENT OF NAROK.....

2ND RESPONDENT THE ATTORNEY

GENERAL.....3RD RESPONDENT

(An application for extension of time to file and serve a Record of Appeal from the Judgment and Orders of the Environment and Land Court at Narok (C. Mbogo, J) delivered on 6th March, 2025

in

ELC Case No. 21 of 2021)

RULING

1. This application dated 13th August,2025 arises from proceedings in the Environment and Land Court at Narok (Hon. Justice Charles Mbogo) which delivered judgment on 6th March 2025.

2. The dispute concerns Parcel of Land No. CIS-MARA/TALEK/155, approximately 4,000 acres situated within

the Maasai Mara National Reserve. The ELC judgment was delivered in favour of Livingstone Kunini Ntutu (the 1st respondent herein), who was the plaintiff in the trial court proceedings against the County Government of Narok (1st Defendant), Olkiombo Limited (2nd Defendant), and the Attorney General (3rd Defendant). Olkiombo Limited did not participate in the ELC proceedings and has taken no part in the appellate proceedings. Consequently, the County Government of Narok and the Attorney General are the 2nd and 3rd respondents respectively in these proceedings.

3. Following the ELC judgment, the 1st respondent took possession of the suit property and began collecting fees, levies, and other charges from tourists visiting the Maasai Mara.
4. The applicant, Resoluterise Community Based Organisation, describes itself as a Community Based Organisation whose members allegedly reside on the disputed land and operate camps therein, thereby claiming a direct interest in the matter. Following the ELC judgment, the applicant filed a Notice of Appeal dated 19th March 2025 designating itself as

an "affected

party" and expressing dissatisfaction with the whole judgment. Notably, the applicant had not been a party to the trial proceedings in the Environment and Land Court.

5. The County Government of Narok filed Civil Appeal No. E052 of 2025 against the ELC judgment and simultaneously filed Civil Application No. NAK E037 of 2025 seeking stay of execution. On 16th July 2025, this court (Warsame, Kiage, and Mativo, JJA) heard the stay application and issued conservatory orders directing *inter alia*:

- a. *That Civil Appeal No. E052 of 2025 be heard on a priority basis;*
- b. *That the 1st respondent shall not charge, sell, or dispose of the suit property pending determination of the appeal;*
- c. *That the 1st respondent, having taken possession, may continue collecting fees and levies, but must render accurate accounts to the County Government if the appeal succeeds;*
- d. *That no party shall interfere with the 1st respondent's possession;*
- e. *That the appeal and submissions be filed and served within 15 days, with the substantive appeal set for hearing on 28th October 2025.*

6. The applicant, had separately filed Civil Application No. NAI

E177 of 2025 (a stay application against the impugned

judgment). During proceedings on 16th July 2025, the Court directed that the orders issued in Civil Application No. NAK E037 of 2025 should apply to the applicant's stay application as well.

7. The applicant now brings this application seeking *inter alia*, leave to file and serve the Record of Appeal out of time and that the Record of Appeal filed be deemed as properly filed as required by law.
8. The application is supported by the affidavit of Dominic Kasoe Kaiyok sworn on 13th August 2025 and a further affidavit sworn on 3rd September 2025.
9. The applicant's application is premised on the following grounds as deposed in the affidavits:
 - a. The applicant contends it was admitted as an appellant on 16th July 2025 pursuant to an order of this Court in Civil Application No. NAI E177 of 2025, wherein the Court directed that the Record of Appeal be filed within 15 days from the date of the order.
 - b. The applicant avers that it embarked on the process of looking for pleadings in the matter, noting the

voluminous

nature of the record which had been litigated in multiple for a including High Court in ELC Case No. 1565 of 2000,Civil Appeal No. 109 of 2014,SC Petition No. 3 of 2015 (which remitted the matter back to the ELC) and that given the extensive history and volume of pleadings and evidence (including voluminous survey maps), the applicant had to source expert services to make copies and compress the maps to fit normal printer A4 size

c. The applicant avers there is no inordinate delay and that the intended appeal has merit and high chances of success and further no prejudice will be occasioned to the respondents if the application is granted.

10. The 1st respondent (Livingstone Kunini Ntutu) filed a Replying Affidavit sworn on 1st September 2025 and a Supplementary Affidavit sworn on 5th September 2025 opposing the application on fundamental procedural and jurisdictional grounds. He contends that the applicant was never a party to the ELC proceedings and has failed to seek joinder either before the trial court or this Honourable Court,

in contravention of Order 1 Rule 10 of the Civil Procedure Rules, that the applicant is not

an "aggrieved person" within the meaning of Rule 77 of the Court of Appeal Rules, 2022, as it has not demonstrated how it has been affected or impacted by the ELC decision of 6th March 2025. Further, the applicant is registered at Starehe Constituency, Nairobi County, and has not produced a register of members to prove any nexus between its membership and the Talek area in Narok County. Even if extension of time is granted, the applicant will still not be properly before Court for failure to initially seek joinder.

11. The 1st respondent further contends that the applicant's claim of having been "admitted as an appellant" on 16th July 2025 is a deliberate falsehood and that a transcript of the verbatim court proceedings confirms that the Court never admitted the applicant in Civil Appeal No. E052 of 2025; rather, the Court merely directed that the conservatory orders issued in Civil Application No. NAK E037 of 2025 should apply to the applicant's stay application (Civil Application No. NAI E177 of 2025) lastly, he avers that the applicant has no appeal whatsoever, let alone one with high probability of success,

having failed to file a Record of Appeal despite filing a Notice of Appeal on 19th March 2025.

12. The 2nd respondent (County Government of Narok) echoes the procedural objections regarding the applicant's failure to seek joinder, characterizing the application as fundamentally defective and an abuse of court process. However, its primary concern centres on prejudice and the integrity of existing appellate proceedings. It contends that it has already filed Civil Appeal No. E052 of 2025, which has been prioritized by the Court for hearing on 28th October 2025. Allowing the Applicant to file an appeal out of time would severely prejudice these proceedings and undermine the judicially mandated timelines and conditions already established.
13. The 2nd respondent further contends that the applicant's draft Memorandum of Appeal lacks any distinct or novel grounds that would justify a separate appeal, as it substantially mirrors issues already raised in Civil Appeal No. E052 of 2025. Moreover, the delay of over five months since the 6th March 2025 judgment, without reasonable

explanation or documentary evidence of efforts to obtain proceedings,

constitutes inordinate delay that undermines principles of finality and efficiency in litigation. As custodian of the Maasai Mara National Reserve, the 2nd respondent submits it is well positioned and competent to represent and advocate for public interests in the appellate proceedings, rendering the applicant's separate appeal unnecessary and duplicative. In their view the application represents an impermissible attempt to circumvent the Court's carefully structured directions for expeditious determination of the substantive appeal.

14. Before addressing the substantive merits of this application, it is imperative to determine certain preliminary issues that go to the root of the Court's jurisdiction to entertain the application and the applicant's standing to bring it. These preliminary matters, if resolved against the applicant, would be fatal to the application and render any consideration of the merits academic.
15. The applicant's entire case rests on the assertion that this Court admitted it as an appellant on 16th July 2025 and directed it to file a Record of Appeal within 15 days. This

assertion is central to the application and forms the jurisdictional foundation upon

which the applicant seeks relief. If this assertion is incorrect, the application must fail *in limine*.

16. I have carefully examined the orders issued on 16th July 2025 in both Civil Application No. NAK E037 of 2025 and Civil Application No. NAI E177 of 2025, as well as the verbatim transcript of proceedings on that date. In Civil Application No. NAK E037 of 2025, the Court issued specific orders in relation to the County Government of Narok's stay application. The operative orders were:

- a) That Civil Appeal No. E052 of 2025 shall be heard on priority basis;*
- b) That the 1st respondent shall not charge, sell or dispose of the suit property;*
- c) That the 1st respondent may continue collecting fees and levies but must account;*
- d) That no party shall interfere with the 1st respondent's possession;*
- e) That the applicant shall serve the appeal upon the respondents within 15 days.***

17. In interpreting the orders above, the starting point must be to ascertain their manifest purpose and intent. **In Gakibe v Ngumba & 4 others, Civil Appeal (Application) E300 of 2021 [2023] KECA 1420 (KLR)**, the Court held that in

interpreting a

judgment or an order, the court's intention is to be ascertained primarily from the language of the judgment or order in accordance with the usual well-known rules relating to the interpretation of documents. The judgment or order and the court's reasons for giving it must be read as a whole in order to ascertain its intention. The manifest purpose of the judgment is to be determined by also having regard to the relevant background facts which culminated in it being made. Applying these principles to the instant case, both the plain wording of the orders of 16th July 2025 and the background circumstances unequivocally demonstrate that the Court was dealing with competing stay applications arising from the same ELC judgment and fashioning conservatory measures to preserve the status quo, not admitting new parties to appellate proceedings or authorizing separate appeals.

18. Critically, these orders were made in the context of the County Government's appeal (Civil Appeal No. E052 of 2025), not in relation to any appeal by the applicant herein. Indeed, the transcript reveals that the direction to file and

serve the appeal within 15 days arose from Senior Counsel
Kilukumi's complaint

on behalf of the 1st respondent that they had not been served with the substantive appeal. The Court then directed that the County Government (the appellant) shall serve the appeal upon the respondents within 15 days. Clearly, the order arose from a specific procedural complaint about service between the actual parties to Civil Appeal No. E052 of 2025, not from any admission of the applicant as a party to those proceedings. The direction was clearly addressed to the County Government to remedy a service defect, not to Resoluterise Community Based Organisation.

19. Significantly, the applicant's stay application (Civil Application No. NAI E177 of 2025) was not formally listed for hearing or mention on 16th July 2025. Rather, following the disposal of the County Government's stay application (Civil Application No. NAK E037 of 2025), learned counsel for the applicant, Mrs. Wambugu, sought the Court's indulgence to bring a related application to the Court's attention. Consequently the court pragmatically directed that the same conservatory orders issued in Civil Application No. NAK E037 of 2025 should apply to the applicant's stay application.

This was clearly a case

management decision aimed at ensuring consistency and avoiding the prospect of conflicting orders regarding the same property. It was not a formal determination of the applicant's status or standing in appellate proceedings, nor could it reasonably be construed as admission of the applicant as a party to any substantive appeal.

20. The application of conservatory orders to the applicant's stay application was precisely that; conservatory measures to preserve the status quo pending determination of the substantive appeal filed by the County Government. It was not, and could not have been, an admission of the applicant as a party to that appeal or authorization to file a separate appeal.
21. In addition, a single Judge sitting in chambers has limited jurisdiction prescribed by the Court of Appeal Rules, 2022 and relevant statutes. Rule 4 of the Court of Appeal Rules empowers a single Judge to grant extension of time. However, the question of who may be a party to an appeal, particularly where such person was not a party to the trial proceedings, raises fundamental issues of standing and

joinder that cannot be

determined by a single Judge through the back door of a stay application.

22. The proper procedure for a non-party seeking to be heard in appellate proceedings is to apply for joinder under the applicable rules. The applicant has never made such an application either before the trial court or before this Court. To allow the applicant to circumvent this mandatory procedure by misconstruing conservatory orders as admission to appellate proceedings would set a dangerous precedent and undermine established procedural safeguards.
23. Rule 77 of the Court of Appeal Rules, 2022 provides for appeals by persons affected by a decree or order. However, this presupposes that the affected person has established their standing to appeal. The applicant claims to be affected by the ELC judgment, asserting that its members reside on the disputed land and operate camps therein. However, the respondents have raised serious challenges to this assertion, noting that the applicant is registered in Starehe Constituency, Nairobi County, not Narok County; that it has

not produced a register of members showing nexus to the
disputed land; and

that there is no evidence it sought to intervene in the trial proceedings when its alleged interests were being determined. These are substantial issues going to the very root of the applicant's standing and capacity to prosecute an appeal. Such fundamental questions cannot be resolved by a single Judge sitting on an application for extension of time. They require proper determination on merits through appropriate procedural mechanism laid by this court.

24. In light of the foregoing analysis, this Court finds that the preliminary issues are fatal to the application and dispose of it entirely. I Specifically find that:

- a) The applicant was never authorized to file its appeal by the orders of 16th July 2025;***
- b) The orders of 16th July 2025 merely applied conservatory measures to the applicant's stay application and did not confer standing or party status;***
- c) The fundamental questions of standing and joinder raised by the Respondents cannot be resolved by a single Judge sitting in chambers through an extension of time application;***
- d) The application is fundamentally misconceived and constitutes an abuse of the court process.***

25. Given these findings on the preliminary issues, there is no appeal to which time can be extended. The application is a non- starter and must fail *in limine*.
26. In the premises, this application dated 13th August 2025 is hereby dismissed with costs to the 1st and 2nd respondents.

Dated and delivered at Nakuru this 21st day of October, 2025.

M. WARSAME

.....
JUDGE OF APPEAL

*I certify that this is a true
copy of the original*

Signed
DEPUTY REGISTRAR