



Sugut v Yatich & another; Jepkorir (Interested Party) (Civil Application E040 of 2024) [2025] KECA 1648 (KLR) (9 October 2025) (Ruling)

Neutral citation: [2025] KECA 1648 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAKURU
CIVIL APPLICATION E040 OF 2024
MA WARSAME, JA
OCTOBER 9, 2025**

BETWEEN

SUSAN KIMELI SUGUT APPLICANT

AND

DAVID YATICH 1ST RESPONDENT

AHMED KIPROTICH KIRUI 2ND RESPONDENT

AND

EVALINE JEPKORIR INTERESTED PARTY

(An application for extension of time to file an appeal out of time against the judgment of the High Court at Nakuru (Justice A. L. Omollo) delivered on 5th July, 2023 in ELC No. E 2 of 2022)

RULING

1. The applicant has filed a Notice of Motion dated 11th April 2025, seeking extension of time to file an appeal against the judgment of the High Court at Nakuru (Justice A. L. Omollo) delivered virtually on 5th July 2023. The learned judge found that the applicant had no legal claim over land parcels Nakuru/ Ngongongeri/663, 686 and 258, and that the District Surveyor had confirmed the applicant had fenced wrong parcels of land and planted maize on land that did not belong to her. The court concluded that the applicant had trespassed into parcels No 686 and 663, and dismissed the appeal as lacking merit with costs awarded to the respondents.
2. The applicant now seeks the following orders:
 - a. Extension of time to file an appeal against this judgment
 - b. Stay of eviction orders dated 29th day of August 2024 by Hon. B.R. Kipyegon the Molo Principal Magistrate



- c. That costs of the application be provided for
3. In support of the application, the applicant contends that:
 - a. The disputed land parcels are situated at Trust Land and have not been legally issued as private owned property
 - b. The eviction order used by the respondent is not legitimate and is fake
 - c. The respondents fraudulently claim to own the disputed parcels of land
4. The principles governing applications for extension of time are well settled. In *Nicholas Kiptoo Arap Korir Salat v IEBC & 7 Others* [2014] eKLR, this Court established the following principles:
 - a. Extension of time is not a right but an equitable remedy available only to a deserving party at the Court's discretion
 - b. The applicant bears the burden of laying a satisfactory basis for the extension
 - c. The Court must consider each case on its merits
 - d. There must be reasonable cause for the delay, expressed to the Court's satisfaction
 - e. The Court must consider potential prejudice to respondents
 - f. The application must be brought without undue delay

Further, in *Abdul Aziz Ngoma v Mungai Mathayo* [1976] eKLR, this Court emphasized that the Court's discretion only comes into existence after 'sufficient reason' for extending time has been established.

5. The judgment sought to be appealed was delivered on 5th July 2023. Under Rule 77(2) of the Court of Appeal Rules, 2022, the prescribed period for filing a notice of appeal expired on 19th July 2023; fourteen days after the decision. This application was filed on 11th April 2025, representing a total delay of approximately 21 months. By any standard, this delay is inordinate and requires compelling explanation.
6. The applicant's explanation for the urgency in the orders sought centers on alleged demolition activities that occurred on 11th April 2025, the very day this application was filed and irregular eviction orders from Molo Court which were "fake and not legit".
7. While these allegations may well have merit, they do not constitute an explanation for the inordinate delay in filing this application. The proper avenue to challenge allegedly fraudulent eviction orders and land ownership claims is through substantive proceedings, not as justification for an extension of time application.
8. In my view, the applicant has failed to account for her complete inaction over a period of 21 months. The applicant appears to have completely abandoned any intention to appeal until the very day she filed this application after the eviction orders were executed. Such conduct cannot be countenanced by this Court.
9. Further, the respondents would undoubtedly suffer significant prejudice if this application were granted. After 21 months of silence, they were entitled to assume that the judgment had been accepted



and to arrange their affairs accordingly. To grant an extension at this stage would be manifestly unfair to them. As was observed in *Samuel Mbugua Githere v Kimungu* [1984] eKLR:

“If this simple and formal document is not filed and served on him, is he not entitled to assume that the other party has accepted the High Court decision and order his affairs accordingly?”

10. In the circumstances, I find that the period of delay is not only inordinate but is inexcusable. The application lacks merit and must fail.

DATED AND DELIVERED AT NAKURU THIS 9TH DAY OF OCTOBER 2025.

M. WARSAME

JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

