



Anyangu v Makwata & 2 others (Environment and Land Miscellaneous Application E014 of 2022) [2025] KEELC 6981 (KLR) (8 October 2025) (Ruling)

Neutral citation: [2025] KEELC 6981 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E014 OF 2022
A NYUKURI, J
OCTOBER 8, 2025**

BETWEEN

MAKWATA PATRICK ANYANGU APPLICANT

AND

TONY ASITIWA MAKWATA 1ST RESPONDENT

SHULA SONGA MAKWATA 2ND RESPONDENT

THE LAND REGISTRAR, KAKAMEGA 3RD RESPONDENT

RULING

Introduction

1. Before court is a Notice of Motion dated 28th June, 2024 filed by the applicant seeking the following orders:
 - a. Spent.
 - b. That this Honorable Court be pleased to grant the applicant leave to appeal out of time against the ruling delivered on 11th March, 2024 by Hon. Z.J Nyakundi (PM) in Kakamega MCELC Case No. E030 of 2020.
 - c. That this Honorable Court be pleased to extend the time of filing the appeal against the ruling delivered on 11th March, 2024 by Hon. Z.J Nyakundi (PM) in Kakamega MCELC Case No. E030 of 2020.
 - d. That this Honorable Court be pleased to issue an order of inhibition stopping further dealings, registration and transactions on parcels of land known as L.R No. S/Wanga/Lureko/717 and L.R No. S/Wanga /Lureko /1138 respectively pending the hearing and determination of this application.



- e. That this Honorable Court be pleased to issue an order of inhibition stopping further dealings, registration and transactions on parcels of land known as L.R No. S/Wanga/Lureko/717 and L.R No. S/Wanga/Lureko /1138 respectively pending the hearing and determination of the appeal.
 - f. That the costs and incidental to of this application abide the result of the appeal.
2. The application is predicated on the affidavit sworn by Makwata Patrick Anyangu, the applicant on 28th June, 2024. The applicant’s case is that the respondents herein moved court vide application dated 20th November 2023 seeking stay of judgment whereof on 18th December 2023, directions were made by court that the application be disposed by way of written submissions and ruling fixed for 8th January, 2024. That on the said date, the applicant and his counsel attended court when they were informed that the ruling was not ready and would be delivered on 4th March 2024. That on 4th March 2024, they were informed that the ruling would be delivered on 11th March 2024. That on that date they were informed to “try” on 25th March 2024 and that they continued appearing in court every subsequent Monday but they were always informed that the ruling was not ready.
 3. The applicant stated that he found it strange that the 1st and 2nd respondents mysteriously stopped attending court sometimes in March 2024 but that the applicant’s advocate was serving them with ruling notices regardless. That he only learned that the ruling had been delivered when the 1st and 2nd respondents began subdividing one of the suit properties whereof on obtaining a search certificate, he noted that the titles had reverted to them.
 4. That his advocate searched for the court file in vain prompting him to write a letter to the court administrator to assist in tracing the court file. That the file was later traced and that is when he learnt that a ruling had been delivered on 11th March 2024. That subsequently, the court issued an order on 18th March 2024 reverting titles into the names of the 1st and 2nd respondents. That no notice for delivery of the ruling was issued to his advocate and by the time he learnt of the ruling, time to appeal had lapsed. That the delay was inadvertent and excusable as the applicant and his counsel were made to believe that delivery of ruling was still pending. He argued that he had demonstrated good and sufficient cause for his delay in filing appeal in time. That he is dissatisfied with the ruling and wishes to challenge the same on appeal. That his appeal raises arguable grounds and has high chances of success. That delay of three months is not inordinate and the application was brought without undue delay.
 5. He attached Notice of Motion dated 30th November 2023; ruling notices dated 22nd March 2024 and 4th May 2024; search certificates; letter dated 31st May 2024 to Court Administrator; ruling of 11th March 2024 and order issued on 18th March 2024; and draft Memorandum of appeal.
 6. The application was opposed. The 1st and 2nd respondents filed replying affidavit dated 2nd October 2024. They stated that the instant application lacked merit and that the applicant failed to act diligently. That delay in filing the appeal was not excusable as they had been attending court and that the applicant has been sleeping on his rights.
 7. They also stated that the applicant had not demonstrated good faith. That the applicant wishes to have his case determined on merit and not on technicality. That the appeal does not raise arguable grounds. That the delay of three months is inexcusable. That the Court of Appeal at Kisumu handled that matter conclusively on appeal in Appeal No. E107 of 2023. That the respondent and his family will not suffer substantial loss if inhibition orders are not granted as they are the bona fide registered owners of the suit property, and that the suit property is not part of the estate of the applicant. That the applicant has come to court with unclean hands.



8. In arguing their respective cases, parties filed written submissions. On record are submissions filed by the applicant dated 10th December 2024 and those of the respondents dated 17th March 2025; both of which the court has duly considered.

Analysis and Determination

9. The court has carefully considered the application, response and written submissions. Two issues arise for the court's determination namely;
- i. Whether there is good and sufficient cause for the court to grant extension of time to the applicant to file appeal out of time.
 - ii. Whether the applicant has met the threshold for grant of inhibition.
10. Section 79G of the *Civil Procedure Act* provides that appeals from the subordinate court to this court shall be filed within 30 days of the delivery of the decision sought to be appealed against, but the court may admit an appeal out of time where good and sufficient cause is shown.
11. Order 50 Rule 6 of the Civil Procedure Rules provides for extension of time as follows;
- “Power to enlarge time [Order 50, rule 6]
- Where a limited time has been fixed for doing any act or taking any proceedings under these Rules, or by summary notice or by order of the court, the court shall have power to enlarge such time upon such terms (if any) as the justice of the case may require, and such enlargement may be ordered although the application for the same is not made until after the expiration of the time appointed or allowed:
- Provided that the costs of any application to extend such time and of any order made thereon shall be borne by the parties making such application, unless the court orders otherwise.”
12. This court has both the jurisdiction and unfettered discretion to extend time. In determining whether or not to grant extension of time, the court considers the length of the delay, the reason for the delay and the interests of justice. An applicant for extension of time must explain the reasons for the delay to the court's satisfaction as extension of time is not a right of a party.
13. In the case of *Nicholas Kiptoo Arap Korir Salat –vs- Independent Electoral and Boundaries Commission & 7 Others (2014) e KLR*, the Supreme Court of Kenya stated principles that govern the court's discretion in an application for extension of 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 the basis to the satisfaction of the court.
 3. Whether the 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.”
14. In the instant matter, the applicant’s reason for delay is that they were unaware that ruling had been delivered as they were not notified and his counsel kept asking for the ruling and serving ruling notices only to learn that the ruling had been delivered and had been acted upon by the respondents. This assertion was supported by ruling notices served on the respondents that were presented by the applicant. The respondents did not deny having been served and receiving the ruling notices from the applicant’s counsel even after the delivery of the ruling. The last notice was dated 4th May 2024. The delay being three months and in view of the fact that as late as may 2024, the applicant had not been aware of the delivery of the impugned ruling, I am of the view that the reason given by the applicant is excusable and he ought to be allowed to file his appeal out of time.
15. I have also considered the ruling intended to be appealed against. The same is dated 11th March 2024. In that ruling the trial court ordered that the order dated 11/10/2022 is set aside and parties advised to fix the matter for hearing of the main suit; the defendant was granted leave to file their statement of defence and serve the same on the plaintiff. This ruling was in respect to the Notice of Motion application dated 20th November 2023 filed by the respondents herein in Kakamega CMCC No. 30 of 2020 seeking three prayers as follows;
- i. That this application be heard ex parte and service of the same be dispensed with in the 1st instance.
 - ii. That this Honourable court do issue an order for stay of the judgment issued in this matter and all other consequential orders pending the hearing and determination of this application inter partes
 - iii. Costs of this application be provided for.
16. Besides the ruling of 11th March 2024, an order was extracted on 18th March 2024, which stated as follows;
- “Upon this matter coming up for hearing/mention on 18/12/23 on the defendants’ notice of motion dated 20/11/23 and stood over to 08/12/24 before Hon. Z.J. Nyakundi-Senior Principal Magistrate (S.P.M) and upon perusal and hearing the submissions of the Defendants/Applicants in person and Ayata Counsel for the Plaintiff/Respondent and matter stood over for ruling on 11th March, 2024. it is hereby ordered that;
- court order
1. That, this honourable court do and is hereby issued an order of stay of the judgment issued in this matter and all other consequential orders pending the hearing and determination of this application inter partes.
 2. That, the orders dated 11/10/2022 given by the court on 26/09/2022 that
 - a. The title deeds namely S. Wanga/Lureko/717 and S. Wanga/Lureko/1138 in the names of John Daniel Makwata (Deceased) be and is hereby nullified and cancelled and the same reverts back into the names Tony Asitiwa Makwata, Shula Songa Makwata & Barnabas Weche Makwata.



3. That, parties are advised to fix this matter for hearing of the main suit, the defendants are granted leave to file their statement of defence and serve the same upon the plaintiff.”
17. Juxtaposing the impugned orders made in the ruling of 11th March 2024 and the extracted orders of 18th March 2024 on one part, against the determined application dated 20th November 2023; it is apparent and prima facie that in its ruling, the trial court made orders for setting aside judgment and granting the defendants leave to file defence when no such prayers had been sought. Besides, the order extracted on 18th March 2024 cancelling the applicant’s title and reverting it to the respondents, is an order that was never sought in the notice of motion dated 20th November 2023 nor granted in the impugned ruling of 11th March 2024. One of the grounds raised in the draft memorandum of appeal is that the trial court granted orders that had not been sought in the application. On that basis alone, I am satisfied that the intended appeal has raised a triable issue and therefore the applicant should be availed a chance to challenge the impugned ruling of 11th March 2024.
18. On the prayer for inhibition, Section 68 of the *Land Registration Act* grants this court the power to grant an order of inhibition, stopping registration of dealings in respect of a title as follows;

“The court may make an order (hereinafter referred to as an inhibition) inhibiting for a particular time, or until the occurrence of a particular event, or generally until a further order, the registration of any dealing with any land, lease or charge.”
19. Therefore, where the ends of justice require that a particular title be preserved for some time, the court has unfettered discretion to order an inhibition.
20. This court has inherent power under sections 3A and 63 (e) of the *Civil Procedure Act* to make orders for the ends of justice and to prevent justice from being defeated. As noted above, the respondents herein sought in the first instance, and before service of their application, for orders staying judgment. No order was sought to set aside judgment or cancel title. However, in the impugned ruling, the trial court set aside judgment. And in the extracted order of 18th March 2024, the trial court ordered cancellation of the applicant’s title and registration of the same in the respondents’ names. This turn of events prima facie demonstrate that the substratum of the intended appeal being the suit property, may be at risk of being dealt with to the applicant’s detriment which may render the intended appeal nugatory. For those reasons I am persuaded that even before the applicant files the intended appeal, it is necessary that the suit property is preserved for a while, hence the applicant deserves orders of inhibition. Therefore, this court grants the applicant an order of inhibition stopping registration of any dealings in respect of titles for parcel Nos. L.R No. S/Wanga/Lureko/717 and L.R No. S/Wanga/Lureko /1138 respectively, for 12 months.
21. Section 27 of the *Civil Procedure Act* provides that costs shall be awarded at the court’s discretion and they follow the event. The proviso to Order 50 Rule 6 provides that the party who seeks extension of time should bear the costs thereof. In this case however, as the fact that the delay to file appeal was occasioned by the failure of court to inform parties of the ruling date, I order that each party shall bear its own costs of the application.
22. Ultimately, I find and hold that the application dated 28th June 2024 is merited and the same is allowed as follows;



- a. That this Honorable Court be and is hereby pleased to grant the applicant leave to appeal out of time against the ruling delivered on 11th March, 2024 by Hon. Z.J Nyakundi (PM) in Kakamega MCELC Case No. E030 of 2020.
- b. That this Honorable Court be and is pleased to extend the time for filing appeal against the ruling delivered on 11th March, 2024 by Hon. Z.J Nyakundi (PM) in Kakamega MCELC Case No. E030 of 2020. The applicant shall file and serve the Memorandum of Appeal within 30 days of the date of this ruling.
- c. That this Honorable Court be and is hereby pleased to issue an order of inhibition stopping further dealings, registrations and transactions on titles for parcels of land known as L.R No. S/Wanga/Lureko/717 and L.R No. S/Wanga/Lureko /1138 respectively, for a period of 12 months from the date of this ruling.
- d. Each party shall bear its own costs

23. It is so ordered.

DATED, SIGNED AND DELIVERED AT KAKAMEGA VIRTUALLY/OPEN COURT THIS 8TH DAY OF OCTOBER 2025 THROUGH MICROSOFT TEAMS VIDEO CONFERENCING PLATFORM

A. NYUKURI

JUDGE

In the presence of;

Ms Ayata for the applicant

Mr. Kulundu for the 1st and 2nd respondents

No appearance for the 3rd respondent

Court Assistant- Delphine

