



**Kuronoi v Jitahidi Milele Investment Limited & 5 others**  
**(Environment and Land Miscellaneous Application E018 of 2024)**  
**[2025] KEELC 6578 (KLR) (Environment and Land) (2 October 2025) (Ruling)**

Neutral citation: [2025] KEELC 6578 (KLR)

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT NAIVASHA**  
**ENVIRONMENT AND LAND**  
**ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E018 OF 2024**  
**MC OUNDO, J**  
**OCTOBER 2, 2025**

**BETWEEN**

**PETER LETOYA KURONOI ..... APPLICANT**

**AND**

**JITAHIDI MILELE INVESTMENT LIMITED ..... 1<sup>ST</sup> RESPONDENT**

**LAND REGISTRAR, NAIVASHA ..... 2<sup>ND</sup> RESPONDENT**

**CHIEF LAND REGISTRAR, NAIROBI ..... 3<sup>RD</sup> RESPONDENT**

**DIRECTOR LANDS ADJUDICATION & SETTLEMENT ..... 4<sup>TH</sup> RESPONDENT**

**DISTRICT LAND ADJUDICATION & SETTLEMENT OFFICER,  
NAIVASHA ..... 5<sup>TH</sup> RESPONDENT**

**HON ATTORNEY GENERAL ..... 6<sup>TH</sup> RESPONDENT**

**RULING**

1. Vide a Notice of Motion Application dated 19<sup>th</sup> November, 2024 brought under the provisions of Section 1A, 1B, 3A of the *Civil Procedure Act* Cap 21 Laws of Kenya, Rules (sic), Article 40 and 159 of *the Constitution* of Kenya 2010 and all enabling provisions of the law, the Applicant has sought for the following orders:
  - i. Spent.
  - ii. That the Honourable Court be pleased to grant leave to the Applicant to file an Appeal out of time.



- iii. That the Draft Memorandum of Appeal annexed be deemed to be duly filed subject to payment of filing fees and/or the Applicant be given a set time within which to file the Memorandum of Appeal.
  - iv. Spent.
  - v. That the Honourable Court be pleased to grant Orders of Inhibition preventing any dealings with Land Parcel No. Naivasha/Moi-Ndabi/866 Moi Ndabi Settlement Scheme pending the hearing and determination of the Intended Appeal.
  - vi. That the costs of Application do abide the outcome of the intended appeal.
2. The said application was supported by the grounds therein as well as the supporting Affidavit of an even date, sworn by Peter Letoya Kurunoi, the Plaintiff herein who deponed that he was the original allottee of Land Parcel No. 2166/2167 Moi-Ndabi Settlement Scheme currently Naivasha /Moi-Ndabi/866 Moi-Ndabi Settlement Scheme measuring 5 acres. That he had been in peaceful and uninterrupted possession and occupation of the same since the year 1994.
  3. That the suit property had been a subject of Naivasha Criminal Case No. 660 of 2016 where the court had found that the 1<sup>st</sup> Respondent had been duped by fraudsters to purchase the land apparently from one Kelesi Ole Lekutiti who had been his defence witness in the said criminal case and an intended key witness in the intended suit by himself against the 1<sup>st</sup> Respondent hence he could not be included as a Respondent in the Application for leave to file suit out of time.
  4. That he had filed an Application in Naivasha Chief Magistrate Misc. ELC Application No. E016 of 2023 seeking leave to file suit out of time which application had been dismissed vide a Ruling dated 11<sup>th</sup> July 2024.
  5. That the 1<sup>st</sup> Respondent had been registered as proprietor of the suit property whilst he was still in possession of the Title Deed wherein through its directors, the 1<sup>st</sup> Respondent had been making various attempts to have him, his houses and properties removed from the suit property wherein pursuant to the above captioned Ruling of 11<sup>th</sup> July 2024, the 1<sup>st</sup> Respondent's Directors had physically removed him from the suit property where he had lived in for nearly thirty (30) years. That subsequently, he was facing the risk of losing all his lifetime investments on the suit property wherein there was a risk of the title deed being alienated by the 1<sup>st</sup> Respondent to other third Parties thereby making it difficult to reclaim the same.
  6. That he was now seeking leave to Appeal the impugned Ruling of 11<sup>th</sup> July 2024 out of time. That he was also seeking orders to prevent the alienation of the suit property, the Title Deed now being in the name of the 1<sup>st</sup> Respondent. That he stood to suffer prejudice, substantial loss and damages were the prayers herein sought not granted.
  7. That his advocate had whereas his Advocate had inadvertently filed their Memorandum of Appeal, in respect to the Magistrate's Judgement/Ruling, in the High Court at Naivasha as HCELC Civil Appeal No. E029 of 2024, instead of the Environment and Land Court-Naivasha. That the High Court on its own Motion transferred the Appeal to the Environment and Land Court-Naivasha on 16<sup>th</sup> September 2024 wherein it had been registered as ELC Miscellaneous Case No. E009 of 2024. On the 23<sup>rd</sup> September 2024 when the matter had been placed before this court, the court found that there had been no Appeal pending before it, the same having been transferred by a court lacking jurisdiction. The Appeal had then been struck out.



8. That vide an application made on 27<sup>th</sup> September 2024, his Advocate sought for the certified copy of the Ruling/Order which took time to obtain. That the delay in applying for the proceedings of the Naivasha Chief Magistrate Misc. ELC Application No. E016 of 2023 had further been occasioned by the knowledge that there existed a properly filed Appeal being High Court ELC Civil Appeal No. E089 of 2024. That in the circumstance, the current Application had been filled without unreasonable delay and should be allowed.
9. In response and in opposition of the Application, the 1<sup>st</sup> Respondent vide its Replying Affidavit dated 17<sup>th</sup> February 2025 which was sworn by Leonard Kangethe Wanjiku its chairman, deponed that the 1<sup>st</sup> Respondent held title to the suit property as its registered proprietor.
10. That the parcel of land that the Applicant intended to contest consisted of 5 acres and not the 2<sup>1</sup>/<sub>2</sub> acres being claimed by the applicant (sic) hence his claim was not tenable. That further, the Applicant had not placed any evidence on record to show when he had detected the fraud thus the court could not grant him leave to file suit out of time.
11. That the 1<sup>st</sup> Respondent was a purchaser of land for value and had been in possession of the land thus they were not aware of the Applicant's claim. That the reasons brought forward by the Applicant were within his knowledge at all material times. That the Applicant had not been barred to file suit, and was also not vigilant in pursuing the proceedings in the criminal cause hence the delay had not been explained.
12. That the inability by the Applicant to file suit did not amount to a disability which would then entitle him to seek leave to file suit out of time. That the Applicant had no cause of action to warrant granting him leave to file out of time.
13. In response, the Applicant in his Further Supporting Affidavit dated 24<sup>th</sup> March 2025 deponed that he had been one of the persons who had been affected by Enosupukia water catchment tribal clashes wherein vide an executive order, his excellency Daniel Toroitich Arap Moi (deceased) had instructed that they be relocated and issued with alternative land. That he had been issued with alternative letter of allotment to the suit property on 12<sup>th</sup> June 1995 wherein he had occupied the land immediately.
14. That it had been during the hearing of the criminal case that he had learnt that Title Deed to Land parcel No. Naivasha/Moi-Ndabibi/866 was registered to the 1<sup>st</sup> Respondent when its director produced it. That no such land existed. That it was also during the said hearing that it was discovered that the PIN number used in the Discharge of Charge documents transferring the land from the Settlement Land Transfer Fund Trustee did not belong to Kilesi Ole Kutit who was alleged to have sold the land to the 1<sup>st</sup> Respondent. The PIN number belonged to Leonard Kang'ethe Wanjiku, the 1<sup>st</sup> Respondent's director.
15. That it was thus an abuse of the court process for Leonard Kang'ethe Wanjiku to annexed a fraudulently obtained Title deed and profess ownership of the suit land. That the entire suit land measured 5 acres which land he lay claim to. That the issue of the exact acreage would be determined at the hearing of the suit and not during the instant application.
16. That the fraud had thus been detected during the Naivasha criminal case No. 660 of 2016 which was finalized on 11<sup>th</sup> July 2024. That although there was no suit that had barred the Applicant from filling the suit, he had been advised that it would be prudent to await the outcome of the criminal case since was an accused person. That there would be no prejudice suffered by the Respondents that could not be cured by an award of costs if the Applicant was granted leave to file suit out of time.



17. He thus deponed that the Applicant should not be penalized or be made to suffer due to a mistake that may have been caused by his Advocate. That the instant Application was merited hence the same be allowed.

### **Submissions.**

18. The Application was canvassed by way of written submission wherein the Applicant vide his written submissions dated 27<sup>th</sup> June, 2025 reiterated the contents of both his Supporting and Further Supporting Affidavit to submit that the intended Appeal had chances of success, that the court to exercise its discretion in his favour and not to deny him the opportunity to present his case by granting him leave to file the Appeal out of time.
19. That further, it was trite law that Courts should be slow to shut out a party from arguing his case which should be a last result.
20. That the finding in the criminal case in Naivasha CM CR. C No. 660 of 2016, was a clear case where 1<sup>st</sup> Respondent had been cheated by fraudsters to purportedly purchase the land. That further the PIN used to transfer the Land Parcel Naivasha/Moi-Ndabi/866 belonged to the 1<sup>st</sup> Respondent's director-Leonard Kang'ethe Wanjiku and not the purported buyer(sic).
21. That failure to thus file suit on time to claim the land awaited the outcome of the criminal case that had illustrated fraud in the obtaining of suit land parcel.
22. That the delay in filing of the instant Application, had been occasioned filing of the initial Memorandum of Appeal in the High Court instead of the Environment and Land Court which mistake should not be brought upon the Applicant. He placed reliance on the decisions Civil Application No. 50 of 2010 between Paul Wanjohi Mathenge v Duncan Gichane Mathenge and Sokoro Savings and Credit Co-operative Society Ltd v Abed Mwamburi, Court of Appeal Application No. E032 of 2022 to urge the Honorable Court to allow the prayers sought accordingly.
23. The 1<sup>st</sup> Respondent's stand through its submissions dated 30<sup>th</sup> June 2025 was that there had been no proof that the criminal case had caused delay neither had there been proof as to when the Applicant came to know that the 1<sup>st</sup> Respondent was the owner of the suit property herein. That what was evident was that a period of over 10 years had lapsed without the Applicant filing suit. That subsequently, there had also been inordinate delay by the Applicant in filing the instant suit after the court at Naivasha dismissed his application.
24. It placed reliance on the provisions of Section 79G of the *Civil Procedure Act* Cap 21 to submit that questions arising herein was whether the Applicant filed an appeal within 30 days and whether he had satisfied the court that he had a good and sufficient cause for not filing the appeal on time. Reliance was placed in the case of Nicholas Kiptoo Arap Korir Salat v Independent Electoral and Boundaries Commission & Others [2024] to submit that the Applicant herein had not met the threshold set in the said case thus the instant Application should be dismissed.

### **Determination.**

25. Having considered the application before the court herein, the opposition thereto, the submissions by both parties, the authorities cited and the applicable law, consequently the pending issue for determination is whether this court should grant the Applicant the orders sought for being;
- i. Enlargement of time to enable him file his Appeal after the expiry of the statutory period.



- ii. Orders of Inhibition preventing any dealings with the suit parcel of land pending the hearing and determination of the Intended Appeal.
26. On the first issue concerning the order of Leave to appeal out of time, Section 79G of the *Civil Procedure Act* which gives an appellate court discretion to extend time for filing an appeal from the subordinate Court to the High Court. (Read Environment and Land Court) stipulates as follows;
- “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. “
27. In the case of Nicholas Kiptoo Arap Korir Salat vs. The Independent Electoral and Boundaries Commission & 7 Others [2014] eKLR the Supreme Court of Kenya court held that:
- “... it is clear that the discretion to extend time is indeed unfettered. It is incumbent upon the Applicant to explain the reasons for delay in making the application for extension and whether there are any extenuating circumstances that can enable the Court to exercise its discretion in favour of the Applicant.
- “... we derive the following as the underlying principles that a Court should consider in exercising such discretion:
- i. 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;
  - ii. a party who seeks extension of time has the burden of laying a basis, to the satisfaction of the Court;
  - iii. whether the Court should exercise the discretion to extend time, is a consideration to be made on a case- to- case basis;
  - iv. where there is a reasonable [cause] for the delay, [the same should be expressed] to the satisfaction of the Court;
  - v. whether there will be any prejudice suffered by the Respondent, if extension is granted;
  - vi. whether the application has been brought without undue delay; and
  - vii. whether in certain cases, like election petitions, public interest should be a consideration for extending time”
28. Has the Applicant fulfilled the above requirements so as to be granted leave to file his appeal out of time? The gist of the matter in question is that being dissatisfied with the dismissal of his application, seeking leave to file suit out of time, vide a Ruling dated 11<sup>th</sup> July 2024 in Naivasha Chief Magistrate Misc. ELC Application No. E016 of 2023, his Counsel had erroneously filed a Memorandum of Appeal in the Naivasha High Court being HCELC Civil Appeal No. E029 of 2024 on the 12<sup>th</sup> August, 2024, as opposed to the Environment and Land Court. Vide an order of 16<sup>th</sup> September 2024 in an ELC Misc Case No. E009 of 2024, the High court Judge transferred the matter to the Environment and Land Court whereon vide an order of 16<sup>th</sup> September 2024 wherein on the 23<sup>rd</sup> September 2024



the Environment and Land Court found that there was no Appeal before it, the matter having been transferred from the High Court contrary to the provisions of Section 18 of the Civil Procedure Act. By this time, the timelines within which to file an appeal had lapsed.

29. Anyara Emukule J in *Gerald M'limbine v Joseph Kangangi* [2009] eKLR interpreted the proviso to Section 79G of the Civil Procedure Act as follows;

“My understanding of the proviso to Section 79G is that an Applicant seeking an Appeal to be admitted out of time must in effect file such an Appeal and at the same time seek the Court’s leave to have such an Appeal admitted out of the statutory period of time. The provision does not mean that an intending appellant first seeks the Court’s permission to admit a nonexistent Appeal out of the statutory period. To do so would actually be an abuse of the Court’s process which under Section 79B .....

30. It is clear that for the provisions of Section 79G of the Civil Procedure Act to apply, an Applicant seeking an appeal to be admitted out of time must in effect file such an appeal, and at the same time seek the court’s leave to have appeal admitted out of the statutory period of time. The proviso does not mean that an intending appellant first seeks the court’s permission to admit a non-existent appeal out of the statutory period of time.

31. I have looked at the Applicants’ Application plea for extension of time which was supported by the grounds embodied in the Application as well as the Supporting Affidavit and further affidavit. I have also looked at the copy of the Draft Memorandum of Appeal annexed as MFI-“PLK 4” and having considered the application, the supporting affidavit and the submissions hereto, I find that the Application dated 19<sup>th</sup> November, 2024 herein was not brought without unreasonable/excusable delay. The 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 which discretion I now exercise in favor of allowing the Application for enlargement of time so as to enable the Applicant file his Appeal after the expiry of the statutory period so as to enable him exercise his right of Appeal more so noting that there was no evidence of prejudice brought forth by the Respondent should the application be allowed.

32. On the second issue for determination as to whether the Court should grant Orders of Inhibition preventing any dealings with the suit Parcel of land pending the hearing and determination of the Intended Appeal, Section 68 of the Land Registration Act on the power of the court to inhibit registered dealings provides as follows:

- “(1) 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.
- (2) A copy of the inhibition under the seal of the court, with particulars of the land, lease or charge affected, shall be sent to the Registrar, who shall register it in the appropriate register.
- (3) An inhibition shall not bind or affect the land, lease or charge until it has been registered.”

33. By the above captioned provisions of the law, it is clear that a court can make an order of inhibition for a specific time, until a particular event occurs, or generally until a further order is made. Its purpose is



to preserve the integrity of the land register and prevent the property from being dealt with in a way that would be inconsistent with the court's proceedings.

34. In this case the Applicant has alleged that pursuant to the impugned Ruling of 11<sup>th</sup> July 2024 in Naivasha Chief Magistrate Misc. ELC Application No. E016 of 2023, the 1<sup>st</sup> Respondent's Directors had physically removed him from the suit property where he had lived for nearly thirty (30) years. That subsequently, he was facing the risk of losing all his lifetime investments on the suit property wherein there was a risk of the title deed being alienated by the 1<sup>st</sup> Respondent to other third Parties thereby making it difficult to reclaim the same.

35. In *Joseph Mumita Kipees (suing as the legal representative of the estate of Moses Kisento) v Nteri Merik – Obo Kipaika & 2 others* [2014] KEELC 102 (KLR) (Persuasive), the Court held that:

“The applicant has alleged that the 1<sup>st</sup> defendant intends to sell the suit land. There is no evidence of that allegation. Under Section 68(1) of the *Land Registration Act*, the court has power to grant inhibition orders against a suit land restricting registration of any dealing with the suit land for a particular period or until the occurrence of a particular event. The courts have severally held that in an application for orders of inhibition the applicant has to satisfy the court that:

- a. That the suit property is at risk of being disposed off or alienated or transferred to the detriment of the applicant unless preservatory orders of inhibition are issued.
- b. That the refusal to grant orders of inhibition would render the applicant's suit nugatory.
- c. That the applicant has an arguable case.”

36. In the present case, I am satisfied that the 1<sup>st</sup> Respondent being in possession of the suit matter having evicted the Applicant from therein and this being a land matter, and in view of the claim made by the Applicant, that he had lived on the land for nearly thirty (30) years, the equities tilt heavily in his favour for if the inhibition is not granted and the suit property is otherwise dealt with in a manner adverse to the claimed ownership by the applicant, the intended appeal would be pre-emptively extinguished where the suit property – which is presently registered in the name of the 1<sup>st</sup> Respondent, changes hands.

37. I therefore, grant the orders as sought in the Notice of Motion dated 19<sup>th</sup> November, 2024, wherein;

- i. The Applicant shall within 30 days from the date of this ruling compile, file and serve upon the Respondents a complete record of appeal failure to which the window granted to file the Appeal shall automatically lapse.
- ii. The substratum of the appeal shall be preserved until the Appeal is heard and determined.
- iii. The costs will be in the cause.

Orders accordingly.

**DATED AND DELIVERED AT NAIVASHA VIA TEAMS MICROSOFT THIS 2<sup>ND</sup> DAY OF OCTOBER 2025.**

**M.C. OUNDO**

**ENVIRONMENT & LAND – JUDGE.**

