



REPUBLIC OF KENYA



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Mboroki v Mpinda Guardian Ad Litem of Silas M’ikiome M’mboroki (Miscellaneous Application E045 of 2025) [2025] KEELC 6919 (KLR) (6 October 2025) (Ruling)

Neutral citation: [2025] KEELC 6919 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
MISCELLANEOUS APPLICATION E045 OF 2025**

JO MBOYA, J

OCTOBER 6, 2025

BETWEEN

STANLEY MBURUGU MBOROKI APPLICANT

AND

**FLORENCE MPINDA GUARDIAN AD LITEM OF SILAS M’IKIOME
M’MBOROKI RESPONDENT**

RULING

1. What is before me is the Notice of Motion Application dated 11th September 2025; and wherein the Applicant has sought the following reliefs:
 - i. That the Honourable court be pleased to certify this application as urgent and order that the same be heard expeditiously, notwithstanding that the high court is currently on vacation.
 - ii. That this Honourable court be pleased to enlarge time in favour of the applicant to lodge an appeal to this court out of time against the Judgment by Hon. M.C Nyigei Principal Magistrate [PM] in ELC No. E067/2022 read/delivered on the 17th day of July 2025.
 - iii. That, pending hearing and determination of this application, there be a temporary stay of proceedings ELC No. E067/2022.
 - iv. That the costs of this application are to abide by the outcome of the intended appeal.
2. The instant application is premised on various grounds which have been highlighted in the body thereof. Furthermore, the application is anchored on the supporting affidavit sworn by Stanley Mburugu Mboroki [the Applicant] and to which the deponent has annexed assorted documents, including a copy of the medical report dated 10th September 2025; a copy of the judgment sought to be challenged vide appeal; and a copy of the draft memorandum of appeal.



3. The respondent filed a replying affidavit sworn on 23rd September, 2025; and wherein the respondent has opposed the subject application. In particular, the respondent has contended that the applicant has neither justified the delay nor provided any reasonable explanation for the failure to file the intended appeal within the statutory timelines. Moreover, it has been contended that the medical report which has been annexed by the applicant is contrived and same is solely meant to dupe the court that the applicant was taken ill following the delivery of the impugned judgment.
4. Additionally, it has been averred that even though extension of time is at the discretion of the court, such discretion, it was contended, must be exercised on the basis of sound reasons and explanations. Nevertheless, it was averred that the applicant had failed to proffer any cogent or plausible reason[s] to warrant the invocation of the equitable discretion of the court. To this end, the respondent has invited the court to dismiss the application with costs.
5. The subject application came up for hearing today [6th October 2025], whereupon the advocate[s] for the parties agreed to canvass the application by way of oral submissions. In this regard, the court proceeded to and issued directions, including capping timelines for the submissions by either party.
6. Learned counsel for the applicant adopted the grounds at the foot of the application; reiterated the contents of the supporting affidavit and thereafter highlighted two[2] key issues. Firstly, it was submitted that the judgment which is sought to be appealed against was delivered on 17th July 2025 and hence the applicant had 30 days within which to file/lodge the appeal. Instructively, learned counsel for the applicant cited and referenced the provisions of section 79G of the *Civil Procedure Act*, Cap 21 Laws of Kenya.
7. Moreover, it was submitted that the 30-day timeline for filing the intended appeal lapsed on 17th August 2025; and the subject application was filed on 11th September 2025. To this end, it has been contended that the delay under reference amounts to approximately 23 days only. In this regard, it has been submitted that the subject application was lodged without undue and unreasonable delay.
8. Secondly, learned counsel for the applicant has submitted that the applicant has a history of indisposition. Particularly, it was submitted that the applicant is a cancer patient and same underwent cancer surgery in the year 2019. Moreover, it was submitted that upon the delivery of the Judgment; the applicant herein accrued shock and thus same was unable to issue/give instructions for purposes of an appeal.
9. Premised on the foregoing, learned counsel for the Applicant has therefore submitted that the applicant has tendered and placed before the court plausible, cogent, credible and compelling evidence to warrant the exercise of judicial discretion in his favour. Moreover, it has been contended that the subject application has been mounted in advancement of the applicant's right of access to justice as enshrined in Article 48 of the *Constitution*, 2010.
10. Learned counsel for the respondent adopted and reiterated the contents of the replying affidavit sworn on 23rd September 2025; and thereafter highlighted two [2] issues, namely: the applicant has not tendered any plausible reason to warrant the extension of time; and the respondent shall be disposed to suffer prejudice if the extension of time is granted.
11. Regarding the first issue, learned counsel for the respondent has submitted that the applicant herein has neither tendered nor placed before the court any plausible document to demonstrate that the applicant indeed suffered the shock following the delivery of the impugned judgment. Furthermore, it has been submitted that the medical report which has been annexed by the applicant, was/is contrived to mislead the court into believing the applicant.



12. Furthermore, it has been submitted that the medical report, which is dated 10th September 2025, was merely tailor-made to suit the subject matter. To this end, learned counsel for the respondent has submitted that the medical report in question does not provide a basis to warrant the exercise of equitable discretion in favour of the applicant.
13. Secondly, learned counsel for the respondent has submitted that the respondent herein is the beneficiary of a judgment issued by the subordinate court; and given that no appeal was timeously filed, it is imperative that the respondent be afforded the latitude to partake of and benefit from the fruit[s] of the Judgment. Moreover, it has been submitted that granting the subject application shall prejudice the respondent. In addition, it was submitted that litigation must come to an end.
14. Having reviewed the subject application; the response thereto; and upon taking into consideration the oral submissions canvassed on behalf of the parties, I come to the conclusion that the determination of the subject application turns on two [2] key issues, namely; whether the application has been filed with unreasonable and inordinate delay or otherwise; whether it is in the interest of justice to extend the time for the filing of the intended appeal or otherwise.
15. Regarding the first issue, it is common ground that the judgment which is sought to be appealed against was delivered on 17th July 2025. Moreover, there is no gainsaying that the applicant herein had 30 days within which to file/mount the intended appeal [if at all]. For good measure, the timelines for filing the intended appeal are regulated by the provisions of section 79G of the Civil Procedure Act, Chapter 21, Laws of Kenya.
16. It is also important to underscore that the 30-day period for filing the intended appeal lapsed and or extinguished on or about the 17th August 2025. However, the instant application was not filed until 11th September 2025.
17. Having highlighted the foregoing, it is important to recall and reiterate that the duration between 18th August 2025 and the 11th September 2025 [when the subject application was filed] constitutes approximately 23 days. In this regard, the question that I must address is whether the twenty-three days [which constitutes the delay] is unreasonable and inordinate.
18. To start with, there is no gainsaying that what is unreasonable and or inordinate is not fixed in terms of days. For good measure, a delay for one day may, in certain circumstances, be deemed as unreasonable and inordinate. Nevertheless, the critical point while discerning whether the duration is inordinate or otherwise is the explanation [if any] that is preferred by the claimant.
19. Put differently, the determination of whether a duration under reference is reasonable and inordinate [or otherwise] is dependent on the explanation tendered. Where the claimant tenders a plausible, cogent and compelling explanation, a court of law will very well come to the conclusion that the delay is neither unreasonable nor inordinate. Simply put, the existence of extenuating facts/circumstances goes a long way in determining unreasonableness or otherwise.
20. In the case of *Andrew Chemaringo vs Paul Kipkorir Kibet* (2018) eKLR, the Court of Appeal expounded on the legal principle attendant to extension of time, and factors to be taken into account.
21. For coherence, the court stated thus;
 - (12) The law does not set out any minimum or maximum period of delay. All it states is that any delay should be satisfactorily explained. A plausible and satisfactory explanation for delay is the key that unlocks the court's flow of discretionary favour. There has to be valid and clear reasons upon which discretion can be favourably exercisable.



22. Furthermore, the legal principles to the effect that the reasons proffered by the person seeking condonation will go a long way in determining whether the duration is inordinate or otherwise were also highlighted in the case of *Njoroge v Kimani* (Civil Application Nai E049 of 2022) [2022] KECA 1188 (KLR) (28 October 2022) where the Court as per Mativo J.A, stated as hereunder;

In order to exercise its discretion whether or not to grant condonation, the court must be apprised of all the facts and circumstances relating to the delay. The applicant for condonation must therefore provide a satisfactory explanation for each period of delay. An unsatisfactory explanation for any period of delay will normally be fatal to an application, irrespective of the applicant's prospects of success. Condonation cannot be had for the mere asking. An applicant is required to make out a case entitling him to the court's indulgence by showing sufficient cause, and giving a full, detailed and accurate account of the causes of the delay. In the end, the explanation must be reasonable enough to excuse the default.

13. Equally important is that an application for condonation must be filed without delay and/or as soon as an applicant becomes aware of the need to do so. Thus, where the applicant delays filing the application for condonation despite being aware of the need to do so, or despite being put on terms, the court may take a dim view, absent a proper and satisfactory explanation for the further delays.
23. The applicant herein has filed the subject application within 23 days following the lapse of the statutory duration prescribed under the law. Furthermore, the applicant has explained the reasons underpinning the delay to timeously file the intended appeal. For good measure, the applicant has averred that same was taken ill shortly after the delivery of the judgment. To this end, the applicant has exhibited a medical report, which inter alia highlights the fact that the applicant is a cancer patient.
24. In my humble view, the duration taken and the explanation proffered [which explanation I find to be plausible] suffice to demonstrate that the delay in question was neither unreasonable nor inordinate.
25. Turning to the second issue, it is important to underscore that the dispute beforehand touches on and concerns land. There is no gainsaying that land disputes are both emotive and sensitive. To this end, the parties are to be afforded an opportunity to canvass and or propagate their dispute to the highest cadre of the court. Moreover, a court can only decline to extend time for filing of an appeal in a land-related matter, where the delay is inordinate; the application is devoid of bona fides; coloured with mischief or otherwise calculated to abuse the court process.
26. Furthermore, it is not lost on me that the failure by the applicant to file the appeal timeously may very well be a blunder, mistake and or lapse on the part of the applicant. Nevertheless, the question that comes to the fore is whether such mistakes, lapses and or inaction should accrue punishment by a court of law or otherwise.
27. I beg to underscore that courts of law exist to administer justice and not to mete out discipline and or punishment. Further, and in any event, it is the core duty of the court to foster and facilitate the realization of the right of access to justice. [see Article 48 of the *Constitution* 2010]. [See also the decision in the case of *Philip Keiptoo Chemwolo & another vs Augustine Kubende & another* (1986) eKLR].
28. To my mind, the applicant herein has placed before the court credible reasons and an explanation to warrant the exercise of equitable discretion. Moreover, the interests of justice dictate that the extension of time be granted to enable the applicant to mount the appeal and to partake of the right to access



to justice. In any event, it is not lost on me that the respondent herein shall not be disposed to suffer any prejudice and or harm.

29. Additionally, I hasten to state that the prejudice [if any] that the respondent may suffer can very well be atoned for by way of costs. Suffice it to state that there exist very rare occasions where costs cannot indemnify a party. However, this is not one such case.
30. Before concluding on the subject matter, it is imperative to reiterate the guiding principles that were expounded by the Supreme Court in the case of Nicholas Kiptoo Arap Korir salat vs IEBC and 6 others, Civil Application Number 16 of 2014; [2014]eKLR. For coherence, the Supreme Court distilled various parameters to be taken into account while dealing with and or handling an application like the one beforehand.

Final Disposition

31. Flowing from the discussion highlighted in the body of the ruling, it is evident that the subject application is meritorious. In any event, it is important to underscore that the application has been mounted without undue delay.
32. In the upshot, the final orders that commend themselves to the court are as hereunder;
 - i. The Application dated 11th September 2025; be and is hereby allowed.
 - ii. Leave be and is hereby granted to the applicant to file and serve the Memorandum of appeal in respect of the intended appeal and same to be filed and served within seven (7) days from the date hereof.
 - iii. The Memorandum of appeal in terms of clause [ii] shall be filed in the substantive appeal file and not in the Miscellaneous file herein.
 - iv. The Applicant shall pay to the respondent the sum of Kshs. 10,000/= only within 14 days from the date hereof.
 - v. In default by the applicant to pay the costs in terms of clause [iv] hereof; the respondent shall be at liberty to execute in the conventional manner.
33. It is so ordered.

DATED, SIGNED AND DELIVERED AT MERU THIS 6TH DAY OF OCTOBER 2025

OGUTTU MBOYA, FCI Arb; CPM [MTI-EA].

JUDGE

In the presence of:

Hussein – Court Assistant

Mr. Leonard Ondari for the Applicant

Ms. Mutema holding brief for Mr. Kiogora Arithi for the Respondent

