



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT CHUKA

ELCL MISC APPLICATION NO. E018 OF 2025

**PETER MUTUGI JULIUS.....1ST
APPLICANT**

**ELIPHAS MBAE NTHIIRI.....2ND
APPLICANT**

=VERSUS=

**HUMBLY MUTEGI NGAINE1ST
RESPONDENT**

**MBAKA NGAINE.....2ND
RESPONDENT**

RULING

1. Falling for determination in this ruling is the notice of motion dated 3/10/2025, brought by **Peter Mutugi Julius** and **Eliphas Mbae Nthiiri** [the applicants]. Through it, the applicants seek: (i) an order enlarging the time for lodging an appeal against the ruling of the **Principal Magistrate Court at Chuka [Hon H. Mwendwa]**, rendered on

30/5/2023 in **Chuka E & L Case No. E010 of 2021**; and (ii) an order staying execution of the said ruling.

2. The application was premised on the grounds outlined in the motion and in the supporting affidavit sworn on 3/10/2025 by **Peter Mutugi Julius** and the supplementary affidavit of the same deponent sworn on the same day. The application was canvassed through oral submissions on 27/10/2025. The case of the applicants is that they filed a suit for adverse possession in the lower court. The respondent filed a notice of preliminary objection against the suit. The preliminary objection was heard and determined through a ruling dated 30/5/2023. The lower court allowed the preliminary objection and struck out their suit. Aggrieved by the ruling, they applied for typed copies of the ruling and the proceedings. The Lower Court Registry did not supply them with the two items, hence the delay in lodging an appeal against the said ruling.
3. The applicants add that the delay was further occasioned by the fact that one of them had health challenges and had to seek medical services which impacted on him financially. They contend that the medical challenges hindered their timely filing of the appeal. They add that their intended appeal raises weighty issues and emphasize that they have stayed on the suit land for more than 12 yers.
4. The respondents opposed the application through a replying affidavit dated 16/10/2025 sworn by **Humphrey Mutegi Ngaine** and oral submissions tendered in the virtual court by their counsel, **Mr. Muthomi Gitari**. Their case is that the

application is fatally defective because the applicants have failed to exhibit a draft memorandum of appeal and a copy of the impugned ruling or order. They add that the affidavit in support of the application was not commissioned by a commissioner for oaths.

5. The respondents state that the applicants have not given cogent reasons for the delay of 2 years and 5 months, adding that high blood pressure which the applicants have cited is a manageable condition. It is their case that the applicants have been indolent and they have no justification for the delay. They urge the court to reject the plea.
6. The court has considered the application, the response to the application, and the parties' respective oral submissions. The court has also considered the relevant legal frameworks and the relevant jurisprudence. The following are the two issues that fall for determination in this ruling: (i) Whether the application meets the criteria for enlargement of time for lodging an appeal in this court; and (ii) Whether the application meets the criteria for granting an order of stay of execution pending disposal of an appeal by this court. I will be brief in my analysis and disposal of the two issues.
7. Does the application satisfy the criteria for enlargement of time? The limitation period for lodging an appeal before this court against decisions of lower courts is contained in **Section 16A** of the **Environment and Land Court Act** and **Section 79G** of the **Civil Procedure Act**. The frameworks in the two statutes provide for a limitation period of 30 days from the date of delivery of the decision.

The two frameworks vest in this court discretionary jurisdiction to enlarge the limitation period. The legislated guiding principle in the two frameworks is that the discretionary jurisdiction should be exercised on the basis of good and sufficient cause.

8. The general jurisprudential principles that guide our courts whenever invited to exercise the above jurisdiction were outlined by the Supreme Court of Kenya in the case of ***Nicholas Kiptoo Arap Korir Salat v Independent electoral and Boundaries Commission & 7 Others (2014) eKLR*** as follows:

“a. Extension of time was not a right of a party. It was an equitable remedy that was only available to a deserving party at the discretion of the court;

b. A party who sought extension of time had the burden of laying a basis for it to the satisfaction of the court;

c. Whether the court ought to exercise the discretion to extend time, was a consideration to be made on a case to case basis;

d. Whether there was a reasonable reason for the delay, which ought to be explained to the satisfaction of the court;

e. Whether there would be any prejudice suffered by the respondents if the extension was granted;

f. Whether the application had been brought without undue delay; and;

g. Whether in certain cases, like election petitions, public interest ought to be a consideration for extending time.”

- 9.** In ***Mukora Mwangi v Charles Gichina - Civil Application No. Nai 255 of 1997***, the Court of Appeal summed up the relevant principle as follows:

“It is now well settled that the decision whether or not to extend the time for appealing is essentially discretionary. It is also well-settled that, in general, the matters which this court takes into account in deciding whether to grant an enlargement of time are: first, the length of the delay; secondly, the reason for the delay; thirdly (possibly), the chances of the appeal succeeding if the application is granted; and fourthly, the degree of prejudice to the respondent if the application is granted.”

- 10.** Does the application meet the above criteria? The applicants have not exhibited a draft memorandum of appeal. They have also not exhibited copies of the impugned order/ruling. The court does not know what it is that they are aggrieved with and the basis of their gravamen.

- 11.** In ***Nicholas Kiptoo Arap Korir Salat v Independent Electoral and Boundaries Commission & 7 Others***

(2014), the Supreme Court outlined the following law on the centrality of the draft instrument of appeal in an application for enlargement of time:

“Where one intends to file an appeal out of time and seeks extension of time, the much he can do is to annex the draft intended petition of appeal for the court’s perusal when making his application for extension of time, and not to file an appeal and seek to legalize it. Petition No 10 of 2014 having been filed out of time and without leave (an order of this court extending time) is expunged from the court’s record”

- 12.** In ***County Government of Murang’a & another (Sued as County Secretary County Government of Muranga) v Njoroge (Civil Application 134 of 2019) [2022] KECA 403 (KLR) (4 March 2022) (Ruling); [2022] KECA 403 (KLR)*** the Court of Appeal (Laibuta J A) stated as follows:

“With regard to the merit of the intended appeal, it is sufficient for the applicant to demonstrate that he or she has an arguable appeal with the likelihood of success. In the absence of a draft memorandum of appeal or other material disclosing the grounds on which the intended appeal id to be anchored, I am unable to draw a reasonable conclusion that the intended appeal is arguable with the possibility of success. Indeed the application before me turns on my finding on this critical

issue and no useful purpose would be served by a scrutiny of the remaining issues. For the avoidance of doubt, though I find that the applicants have sufficiently explained the reason for delay in finding their appeal; that the delay is, in the circumstances of this case, not inordinate; and that the respondent would not be prejudiced by extension of time to file the intended appeal. However, my findings on this account do not cure the fatal defect in failing to supply the court with a draft memorandum or other material setting out the grounds on which the intended appeal is preferred. Consequently, the applicants' motion fails and the same is hereby dismissed with no order as to costs."

- 13.** It does emerge from the above prevailing jurisprudence that in the absence of: (i) a draft instrument of appeal; (ii) a copy of the impugned decision; and in the absence of any other material containing the concise grounds of the intended appeal, the court has no basis upon which to evaluate the question as to whether the applicants have demonstrated that they have an arguable appeal with a probability of success.
- 14.** The other fatal aspect of the application is that it was anchored on affidavits that were not sworn before a commissioner for oaths. The affidavits bear the rubber stamp of a law firm (***Igweta Muriithi & Co Advocates***) as

opposed to a duly commissioned commissioner for oaths.
The affidavits are fatally defective.

- 15.** In the circumstances, the court finds that the application dated 3/10/2025 is fatally defective. The same stands to be struck out without venturing into the merits of the plea for enlargement of time.
- 16.** On costs, the general principle is that costs follow the event. No proper grounds have been demonstrated to warrant a departure from the general principle. The applicants will bear costs of the suit.
- 17.** In the end, the application dated 3/10/2025 is struck out for being fatally defective. The applicants shall bear costs of the suit.

**DATED, SIGNED AND DELIVERED AT CHUKA THIS 28TH DAY
OF OCTOBER, 2025.**

B M EBOSO [MR]

JUDGE

In the Presence of:

Peter Mutugi the Applicant

Mr. Muthomi Gitari Advocate for the Respondents

Court Assistant - Mr. Mwangi