



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

Mwoga & 3 others v Diocese of Meru Trustee (Environment and Land Miscellaneous Application E001 of 2025) [2025] KEELC 7491 (KLR) (29 October 2025) (Ruling)

Neutral citation: [2025] KEELC 7491 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT CHUKA
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E001 OF 2025
BM EBOSO, J
OCTOBER 29, 2025

BETWEEN

HENRY MWOGA 1ST APPLICANT
JAMES MUINDI 2ND APPLICANT
JENNIFFER KARUNGA 3RD APPLICANT
JOSEPHAT GITONGA 4TH APPLICANT

AND

DIOCESE OF MERU TRUSTEE RESPONDENT

RULING

1. Falling for determination in this ruling is the notice of motion dated 11/9/2025, brought by the above four applicants. Through it, they seek: (i) an order enlarging the time for lodging an appeal against the judgment rendered on 29/5/2025 in Marimanti SPMC E & L Case No 15 of 2019; (ii) an order deeming the exhibited memorandum of appeal as duly filed upon payment of the requisite court fees; (iii) an order staying execution of the said judgment, pending the hearing and disposal of the intended appeal; and (iv) an order providing for costs of the application. The application was premised on the grounds outlined in the motion and in the supporting affidavit sworn on 11/9/2025 by Josephat Gitonga. It was canvassed through oral submissions tendered in the virtual court on 24/9/2025.
2. The case of the applicants is that they were defendants in Marimanti SPMC E & L Case No 15 of 2019. They were and are aggrieved by the lower court's judgment dated 29/5/2025. With a view to lodging an appeal, they applied for certified copies of the proceedings and the judgment on 30/5/2025 through their advocate. They paid the requisite court fees on 12/6/2025. They were subsequently supplied with typed copies of the judgment and the proceedings on 3/9/2025. In addition, the lower court issued them with a certificate of delay dated 3/9/2025. They point out that the certificate of delay had an error because it indicated that they applied for the judgment and proceedings on 30/7/2025 yet they did so



on 30/5/2025. It is their case that the delay was occasioned by the lower court's failure to supply them with typed copies of the proceedings and the judgment. They add that they have an arguable appeal. They have exhibited a draft memorandum of appeal.

3. The respondent opposed the application through a replying affidavit dated 19/9/2025 and oral submissions tendered in the virtual court on 24/9/2025. Their case is that they were the plaintiff in the suit in the lower court. They sued the applicants for trespass on their land. The applicants vacated the suit land prior to the determination of the suit, hence the plea for an order of stay of execution has been overtaken by events. They emphasize that the applicants having vacated the suit land, there is nothing to stay, and that the suit land is now in good use for the benefit of the community.
4. On the plea for enlargement of time, the respondent's case is that the applicants have failed to provide a proper explanation for the delay. He adds that there was lack of vigilance and interest on part of the applicants.
5. The court has considered the application, the response to the application and the parties' respective submissions. The court has also considered the relevant legal frameworks and jurisprudence. The two issues that fall for determination in this ruling are: (i) Whether the criteria for enlargement of time for lodging an appeal in this court has been met; and (ii) Whether the criteria for granting an order of stay of execution pending the hearing and disposal of an appeal by this court has been satisfied. I will dispose the two issues sequentially in the above order.
6. The limitation period for lodging an appeal in 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 judgment. 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.
7. The general jurisprudential principles that guide our courts whenever invited to exercise jurisdiction to enlarge time 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.”



8. In *Mukora Mwangi v Charles Gichina* – Civil Application No. Nai 255 of 1997, the Court of Appeal summoned up the following relevant principle:

“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.”

9. Have the applicants met the above criteria? The impugned judgment was rendered on 29/5/2025. It was subsequently uploaded on the Judiciary’s Case Tracking System (CTS) platform on 11/8/2025. The lower court issued a certificate of delay on 3/9/2025. The present application was filed on 11/9/2025. There is no evidence to suggest that the applicants had access to a legible copy of the judgment prior to 3/9/2025 (the day the lower court issued to the applicants typed copies of the judgment and the proceedings) and 11/8/2025 (the day the judgment was uploaded). There is also no evidence to suggest that the applicants were aware of the eventual uploading of the judgment on 11/8/2025 and deliberately chose to do nothing in terms of enlargement of time. Taking the above into account, the court takes the view that the applicants have tendered a satisfactory explanation for the delay.
10. The court has looked at the exhibited draft memorandum of appeal. The applicants contend that the trial court erred in failing to note that parcel number Mukothima/Thiiti/237 ceased to exist and that the suit before it was *res judicata*. These are arguable grounds that may require ventilation.
11. The applicants urged the court to deem as duly filed the draft memorandum of appeal exhibited in this miscellaneous application. That is not possible. First, this is a miscellaneous application that will stand fully disposed once this ruling is rendered. It will not be available as a substantive appeal cause in which to prosecute the intended appeal. Secondly, what was exhibited was evidence (an exhibit). It was not an uploaded pleading initiating an appeal. The applicants should prepare a proper memorandum of appeal and file it to initiate a proper substantive appeal.
12. On the plea for an order of stay of execution, the court notes that at this point, it is not seized of an appeal. There is no certainty that the intended appeal will be filed and served. The view the court takes is that the plea should be filed and canvassed on the platform of the intended appeal once the appeal is filed.
13. In light of the foregoing, the application dated 11/9/2025 partially succeeds and is disposed in the following terms:
- a. The time for lodging an appeal against the judgment rendered on 29/5/2025 in *Marimanti SPMC E & L Case No 15 of 2019* is enlarged by 10 days from today.
- b. Parties shall bear their respective costs of this miscellaneous application.

DATED, SIGNED AND DELIVERED AT CHUKA THIS 29TH DAY OF OCTOBER, 2025.

B M EBOSO [MR]

JUDGE

In the Presence of:

Mrs. Maheli for the Applicants



Mr. Bundi for the Respondent

Court Assistant – Mr. Mwangi

ELCEP MISC. APPLICATION NO. E001 OF 2025 – RULING Page 2

