



**Makokha v Shisundi (Environment and Land Miscellaneous Case
E022 of 2024) [2025] KEELC 7538 (KLR) (27 October 2025) (Ruling)**

Neutral citation: [2025] KEELC 7538 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA
ENVIRONMENT AND LAND MISCELLANEOUS CASE E022 OF 2024
A NYUKURI, J
OCTOBER 27, 2025**

BETWEEN

SUSAN BERITA MAKOKHA APPLICANT

AND

ROSELYNE AHINGA SHISUNDI RESPONDENT

RULING

Introduction

1. Before court is a Notice of Motion dated 29th October 2024 filed on 4th November 2024 by the applicant seeking the following orders;
 - a. The applicant be granted leave to appeal out of time from the judgment in Kakamega Chief Magistrate’s Court MCLE No. 71 of 2017 delivered on 23rd April 2024.
 - b. That costs be provided for.
2. The application is predicated on the supporting affidavit sworn by the applicant on 29th October 2024. The applicant’s case is that judgment of the trial was delivered when she was absent and was not aware of the same until she was called at her area Chief’s office and told to vacate the suit property in September 2024. That she had had poor health and was unable to get funds in time to secure legal assistance. She maintained that she had an arguable appeal with chances of success. She attached treatment notes for the period between May 2024 and September 2024.
3. The application was opposed. Roselyne Ahonga Shisundi, the respondent, filed replying affidavit dated 20th January 2025. She stated that the applicant had been represented by her counsel Mr. Matete, who was present when the judgment was delivered. That in July 2024, the applicant filed application under certificate of urgency to act in person and sought stay of execution of the decree and that her application was dismissed on 23. 7. 2024 for want of prosecution, hence it cannot be correct that she knew of the



judgment in September 2024 from her area Chief. She stated that the applicant filed another suit being Kakamega CMC ELC No E164 of 2024 in person against the respondent and her sister Elizabeth Alaga and that the applicant is not truthful. That the applicant, a well-known person, has never been sick and that the treatment notes are doctored for purposes of the instant application.

4. That the delay is inordinate and no reasons have been given hence the application is an abuse of the court process. She attached the applicant's application before the lower court dated 11th July 2024 seeking to act in person and for execution of the decree dated 23/4/2024 and Originating summons dated 24th June 2024 seeking the suit property by adverse possession.
5. The application was canvassed by way of written submissions. On record are submissions filed by the applicant dated 3rd March 2025 and those filed by the respondent dated 24th March 2025; both of which this court has duly considered.

Analysis and Determination

6. The court has carefully considered the application, response and parties' rival submissions. The issue that arise for the court's determination is whether the applicant has met the threshold for grant of orders of extension of time.
7. Section 79G of the *Civil Procedure Act* provides that appeals from the subordinate court to this court shall be filed within 30 days but the court may admit an appeal out of time where good and sufficient cause is shown.
8. The court has jurisdiction to extend time. Extension of time is not the right of a party but the court ought to consider the length of the delay, the reason for the delay and the interests of justice. An applicant seeking extension of time must explain to the court's satisfaction the reason for the delay.
9. 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."
10. In the instant case, the judgment before the trial court was delivered on 23rd April 2024, while the instant application was filed on 4th November 2024 which is six months later. The reason given by the applicant is that she was not present during the delivery of judgment and only came to know about it



in September 2024, when she was called by her area Chief and asked to vacate the suit property. She also stated that her health had been poor and that she lacked funds to get legal assistance.

11. The respondent produced an application filed by the applicant dated 11th July 2024 where the latter sought stay of the lower court decree. In that application the applicant deponed that she learned of the judgment from her then advocate on 12th June 2024. This is contrary to what she has deponed herein that she learnt of the judgment in September 2024 from the area Chief. It is clear to me that the applicant is not an honest person. There was no mention of sickness in the said application. In addition, in June 2024, the applicant was able to file a new suit being Kakamega CMC ELC OS No. 164 of 2024. The applicant cannot be heard to say that she was unable to move the court in June 2024 for the instant application but was able to move the lower court in two matters in June 2024. The delay in this case is a delay of over 6 months. That, in my view is an inordinate delay. To make it worse, the reason for the delay is not plausible as it is clear to me that as of June 2024, the applicant was already aware of the judgment, yet he filed the instant application in November 2024, without any justification for the delay. Whoever approaches equity must do so with clean hands. Having deliberately given incorrect information to this court, the applicant does not deserve the orders sought.
12. For the reason that the explanation given by the applicant is implausible and the delay of six months inordinate, it is my view that the applicant does not deserve orders of extension of time.
13. In the premises, I find no merit in the application dated 29th October 2024 and filed on 4th November 2024, which I hereby dismiss with costs to the respondent.
14. It is so ordered.

DATED, SIGNED AND DELIVERED AT KAKAMEGA IN OPEN COURT/VIRTUALLY THROUGH MICROSOFT TEAMS VIDEO CONFERENCING PLATFORM THIS 27TH DAY OF OCTOBER, 2025

A. NYUKURI

JUDGE

In the presence of;

Ms. Lugulu holding brief for Mr. Momanyi for the applicant

Mr. Siro holding brief for Mr. Getanda for the respondent

Court Assistant: Delphine

