



REPUBLIC OF KENYA



Nyagah v CEC Roads & Infrastructure, County Government Of Embu & 3 others (Civil Application E126 of 2025) [2025] KECA 1858 (KLR) (7 November 2025) (Ruling)

Neutral citation: [2025] KECA 1858 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NYERI
CIVIL APPLICATION E126 OF 2025
K M'INOTI, JA
NOVEMBER 7, 2025**

BETWEEN

JULIANO KIVUTI NYAGAH APPLICANT

AND

**CEC ROADS & INFRASTRUCTURE, COUNTY GOVERNMENT OF
EMBU 1ST RESPONDENT**

COUNTY GOVERNMENT OF EMBU 2ND RESPONDENT

PEANCO COMPANY LIMITED 3RD RESPONDENT

MCA RUNYENJES CENTRAL 4TH RESPONDENT

(Application for extension of time to appeal from the judgment and decree of the Environment & Land Court at Embu (Bor, J.) dated 2nd July 2025 in ELCC APP. No. E018 of 2022)

RULING

1. The applicant, Juliano Kivuti Nyagah, has moved the Court vide a notice of motion dated 28th August 2025 for his notice of appeal dated 18th July 2025 to be deemed as filed on time, and for extension of time to serve the said notice of appeal. The application is taken out under rule 4 of the Court of Appeal Rules (the Rules).
2. The brief background to the application is as follows. The applicant filed a suit in the Senior Principle Magistrates Court at Runyenjes against the respondents for trespass to his land known as Kagaari/ Kigaa/183. He pleaded that without justification or colour of right, the respondents had invaded his said property, excavated a road thereon, and thereby illegally deprived him of 0.22 hectares of the property, for which he claimed Kshs. 1,607,932.30, interest and costs.



3. By a judgment dated 22nd November 2022, the subordinate court found for the applicant and entered judgment in his favour as prayed. The court found that the other respondents were vicariously liable for the actions of the 3rd respondent, Peanco Company Ltd.
4. The respondents were aggrieved and lodged an appeal in the Environment and Land Court (ELC) at Embu. By a judgment dated 2nd July 2025, Bor, J. allowed the appeal and set aside the judgment of the subordinate court. The court found that there was no evidence to show that the 3rd respondent undertook the construction of the road or to justify a finding that the other respondents were vicariously liable for its actions. Each party was directed to bear its own costs.
5. On 18th July 2025, the applicant lodged a notice of appeal. Clearly, by dint of rule 77(2) of the Rules, that notice of appeal was filed out of time by two days. To rectify that defect, the applicant filed the application presently before me.
6. The applicant has explained that his former advocates delayed in filing the notice of appeal and that he was not aware of the delay until he instructed his current advocates after failing to obtain satisfactory update regarding the appeal. He has also explained that some more delay was occasioned in making the application for extension of time as his former advocates had first to consent to the current advocates coming on record post judgment.
7. The applicant adds that his intended appeal is not frivolous, based on a draft memorandum of appeal 28th August 2025 in which he contends that the ELC erred by relying on evidence that was not adduced before the trial court; by reversing the judgment of the trial court yet the respondents had not called any evidence to controvert his evidence; and by failing to protect his right to property under *the Constitution*. It is also his view that he stands to suffer more prejudice than the respondents if this application is denied.
8. These points are reiterated in the applicant's written submissions dated 17th October 2025, which it will serve no purpose to rehash.
9. None of the respondents filed a replying affidavit or submissions, despite being served with a hearing notice and a reminder to comply with directions on filing of submissions.
10. I have carefully considered the application. While the discretion of the Court under rule 4 to extend time is unfettered, the applicant has to explain to the satisfaction of the Court his failure to comply with the rules, for compliance with the rules is the norm rather than the exception. Extension of time is not granted as a matter of course. (See Nicholas Kiptoo Arap Korir Salat v. IEBC & 7 Others [2014] eKLR).
11. The factors that guide the Court in an application for extension of time include the period of delay; the reasons or the explanation for the delay; the conduct of the parties; the prejudice that each of the parties stands to suffer; the balance between the rights of a party who has a judgment in its favour against the right of a party to pursue an appeal; the public interest issues implicated in the appeal; and whether, on prima facie basis, the intended appeal raises bona fide issues or is a mere frivolity. (See Leo Sila Mutiso v. Helen Wangari Mwangi [1999] 2 EA [1999] EA 231).
12. The applicant delayed in filing the notice of appeal by two days only. There is on record correspondence between the applicant's former advocates and the present ones regarding the latter coming on record, which issue appears to have been amicably resolved on or about 19th August 2025. The present application was made on 28th August 2025, less than ten days after the resolution.



13. The delay of two days in filing the notice of appeal and less than 10 days in applying for extension of time is not inordinate and is excusable in the circumstances of this application. As I have indicated, the application is not opposed and in the circumstances, there is nothing on record to suggest that the intended appeal is frivolous or that the respondents will suffer more prejudice than the applicant.
14. In the circumstances, I allow the application dated 28th August 2025 and deem the applicant's notice of appeal dated 18th July 2025 to have been filed on time. The applicant shall serve the said notice of appeal upon the respondents within seven (7) days from the date of this ruling and thereafter file the appeal within Forty Five (45) days from the date of this ruling.
15. Costs of this application shall abide the outcome of the intended appeal. It is so ordered.

DATED AND DELIVERED AT NYERI THIS 7TH DAY OF NOVEMBER, 2025.

K. M'INOTI

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JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

