



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

ELC LAND MISC. CASE NO. E034 OF 2025

SALESIO M'MINYORIAPPLICANT **MIRITI**

=VERSUS=

ALEX MUTIGA.....RESPONDENT **MUNJURI**

RULING

1. Falling for determination in this ruling is the notice of motion dated 19/7/2025, brought by **Salesio Miriti M'Minyori** *[the applicant]*. Through it, the applicant seeks the following verbatim orders:

"1. ... [Spent]

2. That the Honourable Court do extend time to file appeal out of time.

3. That costs be in the cause"

2. Apart from failing to specify in the relevant prayer the particulars of the decision in relation to which an enlargement order was sought, the applicant did not exhibit a copy of the said decision, despite filing two affidavits in support of the application. Similarly, the applicant did not

annex a draft memorandum of appeal or any other material projecting the proposed grounds of appeal

3. The criteria for exercising jurisdiction to enlarge time was outlined by the Supreme Court of Kenya in the case of ***Nicholas Kiptoo Salat v Independent Electoral and Boundaries Commission & 7 others (Application 16 of 2014) [2014] KESC 12 (KLR) (Civ) (4 July 2014*** as follows:

(a) 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;

(b) A party who seeks extension of time has 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, is 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 is granted;

(f) Whether the application has been brought without undue delay; and;

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

4. The Court of Appeal in ***Mukora Mwangi v Charles Gichira; Civil application No. Nai 255 of 1997*** outlined the criteria 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.”

5. In the present application, the impugned ruling has not been exhibited. An extract of the ruling has not been availed. This court does not know the reasoning of the lower court. Similarly, the draft memorandum of appeal has not been exhibited. There is no other material projecting the proposed grounds of appeal. The court does not, therefore, know the proposed grounds of appeal.
6. In the absence of the draft memorandum of appeal containing the intended grounds of appeal, and in the absence of any other material projecting the proposed grounds of appeal, this court has no proper basis upon which to evaluate the question as to whether the applicant has arguable grounds of appeal. The above omission is, consequently, fatal.

7. In ***Salat v Independent Electoral and Boundaries Commission & 7 others (Application 16 of 2014) [2014] KESC 12 (KLR) (Civ) (4 July 2014)***, the Supreme Court of Kenya stated the following:

“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.”

8. In ***County Government of Murang’a & another (Sued as County Secretary County Government of Murang’a) 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 is 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."

- 9.** The result is that, in the absence of a copy of the impugned decision and in the absence of the draft intended memorandum of appeal or any other material projecting the proposed grounds of appeal, this court has no basis upon which to exercise jurisdiction to enlarge time for lodging an appeal. Consequently, the application dated 10/7/2025 stands to be struck out for being fatally defective.
- 10.** On costs, the general principle in **Section 27** of the **Civil Procedure Act** is that costs follow the event. There are no proper grounds to warrant a departure from the above general principle. Consequently, the applicant will bear costs of this miscellaneous application.
- 11.** In the end, the miscellaneous application dated 10/7/2025 is struck out on the ground that, in the absence of a copy of the impugned decision and in the absence of the draft memorandum of appeal or any other material projecting the

proposed grounds of appeal, this court lacks the basis upon which to consider the plea for enlargement of time for lodging an appeal. The applicant will bear costs of the suit.

DATED, SIGNED AND DELIVERED AT MERU THIS 10TH DAY OF NOVEMBER, 2025.

**B M EBOSO [MR]
JUDGE**

ORIGINAL COPY