



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

ELC LAND APPEAL NO. E034 OF 2025

CHARLES MWINGIRWA
MBOROTHI.....APPELLANT

=VERSUS=

JONATHAN KAIBUNGA
LINTARI.....RESPONDENT

(An Appeal against the Judgment of the Senior Resident Magistrate Court at Tigania [Hon. Wechuli - SRM] rendered on 14/10/2020 in Tigania PMC E & L Case No. 90 of 2018)

RULING

1. Falling for determination in this ruling is the notice of motion dated 6/5/2025, brought by **Charles Mwingirwa Mborothi [the applicant]**. Through it, the applicant seeks: (i) an order enlarging the time within which to lodge an appeal against the judgment rendered on 14/10/2020 in **Tigania PMC E & L Case No. 90 of 2018**; (ii) an order staying execution of the said judgment and the consequential decree, pending the hearing and determination of the intended appeal; (iii) an order extending the time for filing a notice of appeal and a

record of appeal relating to the said judgment (sic); (iv) an order that the memorandum of appeal dated 5/5/2025 be deemed as duly filed.

- 2.** The application was premised on the grounds set out in the motion and in the applicant's affidavit dated 6/5/2025. It was canvassed through written submissions dated 30/6/2025, filed by **M/s Laikuru M. K. & Co Advocates**. The case of the applicant is that, on 14/10/2020, the Senior Resident Magistrate Court in **Tigania PMC No. 90 of 2018** entered judgment for the plaintiff against him. He is dissatisfied with the said judgment and wishes to lodge the appeal against it. The time for lodging an appeal has lapsed. His advocate "mishandled the matter" and failed to enter a defence nor attend the hearing. Further, his advocate failed to notify him on the hearing and mention dates. Consequently, hence he was condemned unheard.
- 3.** The applicant adds that he lost contact with his former advocate. He got to know about the judgment recently. The delay in initiating the appeal was not deliberate but was due to "miscommunication" between him and his advocate. The decree-holder is on the verge of executing the decree, which will greatly prejudice him as the registered proprietor of the suit land, **Kianjai/Kianjai/2460**.
- 4.** The applicant contends that the intended appeal has good chances of success, adding that the application has been brought in good faith and that no prejudice will be suffered by the respondent if the application is allowed. He is

willing to abide by any reasonable conditions that the court may impose in allowing the application. It is his case that he has a strong appeal, hence he should be allowed the opportunity to ventilate the appeal.

5. The respondent opposed the application through his replying affidavit dated 15/5/2025 and written submissions dated 25/6/2025, filed by **M/s Murango Mwenda & Co Advocates**. The case of the respondent is that, he filed **ELC Case No. 121 of 2016** at Meru. The case was subsequently transferred to Tigania Principal Magistrate Court for hearing and disposal and was registered as **Tigania PMC E & L Case No. 90 of 2018**. He contends that the applicant was duly served with summons to enter appearance and he subsequently appointed **M/s Wamache & Associates Advocates** to represent him in the matter.
6. He states that the case was active in court from 2016 to 14/10/2020 when the judgment of the trial court was delivered. The applicant and his advocate actively participated in the proceedings as exhibited by the notice of appointment, affidavit by the applicant filed in court on 30/8/2016, invitation to attend the Court Registry to take a hearing date and a mention notice dated 26/2/2020.
7. The respondent adds that for over 4 years when the matter was active in court, the applicant did not bother to defend his interest in the suit land, hence he should not blame his counsel. He contends that the applicant was aware of the suit and the judgment but elected to do

nothing, adding that the applicant has failed to explain the inordinate delay in filing the appeal.

- 8.** He states that there is nothing to stay because the decree of the lower court was fully enforced and the suit land was transferred to him. He adds that the applicant is an indolent litigant who is guilty of laches, hence the court should not grant him the reliefs sought. The respondent urges the court to dismiss the application.
- 9.** The court has considered the application; the response to the application; and the parties' respective submissions. The two issues that fall for determination in the application are: (i) Whether the criteria for enlargement of time for lodging an appeal in this court has been satisfied; and (ii) Whether the criteria for granting an order of stay of execution pending disposal of an appeal by this court has been satisfied. I will analyse and dispose the two issues sequentially in the above order.
- 10.** 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 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.

11. The general jurisprudential principles that guide our courts whenever invited to exercise jurisdiction to enlarge limitation period 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:

- 1. “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;**
- 2. A party who sought extension of time had the burden of laying a basis for it to the satisfaction of the court;**
- 3. Whether the court ought to exercise the discretion to extend time, was a consideration to be made on a case by case basis;**
- 4. Whether there was a reasonable reason for the delay, which ought to be explained to the satisfaction of the court;**
- 5. Whether there would be any prejudice suffered by the respondents if the extension was granted;**
- 6. Whether the application had been brought without undue delay; and;**

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

12. In *Mukora Mwangi v Charles Gichina - Civil Application No. Nai 255 of 1997*, the Court of Appeal summed up the following relevant principle that guides appellate courts when exercising jurisdiction to enlarge time for lodging an appeal:

“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.”

13. Has the applicant satisfied the criteria for enlargement of time? On the length of delay, the judgment in Tigania PMCC No. 90 of 2018 was delivered on 14/10/2020. The instant application is dated 6/5/2025. The application was lodged on 7/5/2025. This is a delay of over 4½ years. This is, without doubt, inordinate delay.

- 14.** On the explanation for the inordinate delay, the applicant blames his counsel for “mishandling the matter” resulting into him being condemned unheard. He also blames “miscommunication” between him and his advocate. The above explanation is unconvincing. The case belonged to the applicant. It was his responsibility to diligently do follow-ups with his advocate and with the Court Registry. He failed to discharge his responsibility as a party to the case in the lower court.
- 15.** In ***Mohamed v Diamond Trust Bank Kenya Limited & another (Application NO. E035 of 2024) [2025] KESC 17 (KLR)***, the Supreme Court of Kenya underscored the responsibility of a litigant in civil proceedings as follows:

“Whereas mistakes of counsel ought not to be visited upon a litigant, there must be cogent and credible evidence that the applicant made concerted efforts or due diligence, through evidence or correspondence of the follow up with the advocates to pursue his rights. It is not enough for a party to simply blame the advocate on record for all manner of transgressions. Courts have always emphasized that parties have a responsibility to show interest in and follow up on their cases even when they are represented by counsel, and it does not matter whether the party is literate or not.”

16. In ***Habo Agencies Limited v Wilfred Odhiambo Musingo [2015]***, the Court of Appeal stated as follows:

“It is not enough for a party in litigation to simply blame the advocate on record for all manner of transgressions in the conduct of the litigation. Courts have always emphasized that parties have a responsibility to show interest in and to follow up on their cases even when they are represented by counsel.”

17. On whether the applicant has an arguable appeal, the applicant concedes that he never filed a defence in the trial court despite being served. The judgment and decree he is challenging relate to an undefended claim. Having failed to defend the claim in the lower court, and in the absence of clear and cogent points of law that would make an appellate court consider the judgment of the lower court as illegal and untenable, I doubt that the applicant can be said to have demonstrated that he has an arguable appeal.

18. On the degree of prejudice, the applicant brought this application after the lapse of over 4½ years. The respondent contends that the decree of the lower court was fully enforced during that period. The respondent has enjoyed the fruits of the judgment for over 4½ years. Reviving the litigation after more than 4½ years of slumber by the applicant will certainly be prejudicial to the respondent.

- 19.** Having evaluated the application; the response to the application; and the parties' respective submissions, the court comes to the finding that the application under consideration has failed to satisfy the criteria for enlargement of time for lodging an appeal in this court. Consequently, the plea for an order enlarging time is rejected.
- 20.** The applicant having failed to procure an order enlarging time for lodging an appeal in this court, there is no proper basis for considering or granting the plea for an order of stay of execution pending the hearing and disposal of an intended appeal.
- 21.** In the end, the application dated 6/5/2025 is rejected and dismissed for lack of merit. In tandem with the general principle in **Section 27** of the **Civil Procedure Act**, the applicant shall bear costs of the case.

DATED, SIGNED AND DELIVERED AT MERU THIS 5TH DAY OF NOVEMBER, 2025.

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**B M EBOSO [MR]
ELC JUDGE**