



**Nzomo v Mutua (Environment and Land Miscellaneous Case  
E056 of 2022) [2025] KEELC 7568 (KLR) (4 November 2025) (Ruling)**

Neutral citation: [2025] KEELC 7568 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS  
ENVIRONMENT AND LAND MISCELLANEOUS CASE E056 OF 2022**

**AY KOROSS, J**

**NOVEMBER 4, 2025**

**BETWEEN**

**SAMMY WAMBUA NZOMO ..... APPLICANT**

**AND**

**MWIKALI MUTUA ..... RESPONDENT**

**RULING**

1. Before this court for determination is a notice of motion dated 9/12/2024, filed by the applicant, expressed to have been moved within the provisions of Article 159(2)(d) of *the Constitution* of Kenya, Sections 1A, 1B and 3A of the *Civil Procedure Act*, and Order 51 Rule 1 of the Civil Procedure Rules 2010, along with all other enabling laws, seeking the following reliefs:
  - a. Spent.
  - b. Spent.
  - c. That this honourable court be pleased to issue henceforth an order setting aside/lifting the ruling/orders/directions delivered/issued by honourable D. N. Sure, Principal Magistrate, in MCELC no. 121 of 2019, at Kangundo, dated 15/01/2024.
  - d. That leave be granted to the applicant to unconditionally file an appeal against the ruling/orders/directions of honourable D. N. Sure, Principal Magistrate, in MCELC no. 121 of 2019, at Kangundo, dated 15/01/2024.
2. The motion is supported by several grounds presented on its face and by the supporting affidavit of the applicant, sworn on 9/12/2024. It is noteworthy that some of the grounds in support of the motion are either incomprehensible or pertain to the substance of the intended appeal. It appears that the applicant, who is acting in person, may not have fully understood the nature of such applications as the one currently before the court. Hence, this court shall limit its summarisation to the relevant and/



or understandable grounds in support of the motion. It must be noted that prayer c) of the motion is also not available to the applicant at this stage of the proceedings, and this court disregards it.

3. Accordingly, the applicant claims that the trial magistrate's decision aggrieves him, and it is in the interest of justice that the motion be allowed. Furthermore, he states that upon receiving the impugned decision, he suffered from depression, and it was only after recently recovering that he filed this motion. Shortly thereafter, he filed another affidavit, sworn on 21/01/2025, which is essentially a reiteration of his earlier averments, but of significance is that it omits the annexures referenced therein.
4. In opposition, the respondent who acts in person filed a replying affidavit, which she swore on 5/02/2025. Taking a cue from the applicant, she primarily focused on the merits of the intended appeal, which this court finds inappropriate. Nonetheless, she asserts that the motion is an afterthought and should be dismissed. In a quick rejoinder, the applicant's further affidavit, which is deposed in 2025, contends that his draft memorandum of appeal demonstrates that his intended appeal has strong prospects of success.
5. Since the parties are self-represented, they appeared before this court on 6/05/2025 and made their oral submissions, with the applicant arguing that the respondent should be evicted from his land. In contrast, the respondent wholly relied on her replying affidavit. Thus, having carefully given thought to the motion, its grounds, affidavits, and rival submissions, the issue that arises for resolution and shall be addressed shortly is whether an extension of time should be granted.
6. On matters of law, Section 79G of the [Civil Procedure Act](#) states that any party involved in proceedings before the lower court who is dissatisfied with its decision may, within 30 days of the decision, appeal against it to the superior court authorised to hear such appeals. However, in cases of delay, parties may, pursuant to Section 95 of the [Civil Procedure Act](#), apply to the court to exercise its sound discretion based on valid and sufficient grounds. The court may subsequently extend the prescribed period at its discretion, even if the initially stipulated period has elapsed. Section 79G of the [Civil Procedure Act](#) states;

“Every appeal from a subordinate court to the High Court shall be filed within a period of thirty days from the date of the decree or order appealed against, excluding from such period any time which the lower court may certify as having been requisite for the preparation and delivery to the appellant of a copy of the decree or order:

Provided that an appeal may be admitted out of time if the appellant satisfies the court that he had good and sufficient cause for not filing the appeal in time.”

While Section 95 of the [Civil Procedure Act](#) provides as follows: -

“Where any period is fixed or granted by the court for the doing of any act prescribed or allowed by this Act, the court may, in its discretion, from time to time, enlarge such period, even though the period originally fixed or granted may have expired.”

6. In considering such applications, the fundamental non-exhaustive principles governing the exercise of judicious discretion for the extension of time were established by the Supreme Court of Kenya in *Salat v Independent Electoral and Boundaries Commission & 7 others* [2014] KESC 12 (KLR). As articulated in paragraph 85 of its decision, the apex court delineated the following criteria:

“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;



A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the court;

Whether the court should exercise the discretion to extend time, is a consideration to be made on a case to case basis;

Whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the Court;

Whether there will be any prejudice suffered by the respondents if the extension is granted;

Whether the application has been brought without undue delay; and

Whether in certain cases, like election petitions, public interest should be a consideration for extending time.

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Whether in certain cases, like election petitions, public interest should be a consideration for extending time.”

6. Additionally, this court must consider its primary goal of ensuring fair, speedy, proportionate, and accessible dispute resolution, as set out in Section 3 of the *Environment and Land Court Act*. The question that arises is whether the applicant has provided sufficient reasons to justify extending the time for appealing. In this instance, the disputed decision was allegedly made on 15/01/2024, and the current application was filed on 10/12/2024, a period of nearly 11 months, which this court finds inordinate.
6. It follows that the burden is on the applicant to explain these months away to the court's satisfaction, as an extension of time is an equitable remedy. Hence, having reviewed the record, the applicant merely asserts that he has been unwell without providing tangible evidence to support these claims, and though this court finds that he has an arguable appeal, he has not met the legal threshold required to justify exercising discretion in his favour.
6. In consequence, the notice of motion dated 9/12/2024 is hereby dismissed with costs to the respondent. This file is hereby effectively marked as closed.

It is so ordered.

**DELIVERED AND DATED AT MACHAKOS THIS 4<sup>TH</sup> DAY OF NOVEMBER, 2025.**

**HON. A. Y. KOROSS**

**JUDGE**



**04.11.2025**

**Ruling delivered virtually through Microsoft Teams Video Conferencing Platform**

In the presence of;

Ms Kanja Court Assistant.

Sammy Wambua applicant present.

Mwikali Mutua respondent present.

