



REPUBLIC OF KENYA



KENYA LAW
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**Sioro v Chemao & another (Environment and Land Miscellaneous Application
E020 of 2025) [2025] KEELC 7654 (KLR) (6 November 2025) (Ruling)**

Neutral citation: [2025] KEELC 7654 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT BUNGOMA
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E020 OF 2025
EC CHERONO, J
NOVEMBER 6, 2025**

BETWEEN

JOHN WAFULA SIORO APPLICANT

AND

JAMIN WANYONYI CHEMAO 1ST RESPONDENT

JERRY WAFULA 2ND RESPONDENT

RULING

1. The Applicant vide a Notice of Motion dated 28th May 2025 seeks the following orders;
 1. That the Applicant be and is hereby granted leave to appeal out of time from the judgment and decree in Kimilili SPM Land case NO. 48 of 2018 (John Wafula Sioro =v= Jamin Wanyonyi Chemao & Another)
 2. That cost of this application be provided for.
2. The application is based on the following four grounds;
 - a. The Applicant is dissatisfied with the decision of the subordinate court in Kimilili SPRM Land Case NO. 43 of 2018 and is desirous of preferring an appeal.
 - b. The statutory time limit for filing the appeal has lapsed.
 - c. The delay in filing the appeal is excusable, justifiable, explicable and/or not inordinate.
 - d. The Applicant has a good appeal with overwhelming chances of success as its highly arguable and not frivolous.
3. The application is also supported by the affidavit of the Applicant who deposed as follows;



1. That I was the plaintiff in Kimilili SPM Land Case NO. 43 of 2018 while the Respondent was the Defendant (John Wafula Sioro =v= Jamin Wanyonyi Chemaio & Another). (see copy of pleadings hereto annexed and marked as DW 01).
 2. That the Judgment was delivered in the Respondent's favour on the 22nd day of November 2022 (see copy of judgment hereto annexed and marked as JWSO1)
 3. That I am desirous of lodging an appeal against the decision because I was never satisfied with it.
 4. That however I am informed by my advocate on record which information I verily believe to be true that the intended appeal is statutory time barred.
 5. That however the delay in filing the appeal is neither inordinate nor unreasonable.
 6. That the delay in filing the appeal within the statutory time frame is excusable explicable and/or justifiable.
 7. That on the 13th day of April 2023, I paid my counsel Kshs. 20,000/= to lodge the appeal but they did not file the appeal on my behalf. (see copy of receipt of payment annexed and marked as JWSO2).
 8. That there have been several cases between myself and the Respondent in which I was charged for assault i.e Criminal case nos 1610, 2023 and 124/2014.
 9. That I have a good appeal with overwhelming chances of success as it's highly arguable and not frivolous, (see copy of receipt of payment annexed and marked JW03).
 10. That the Respondent shall not suffer any undue prejudice if the orders sought are granted.
4. The said application is opposed by the Respondents vide a Replying affidavit sworn by the 1st Respondent on 07/07/2025 where he deposed as follows;
1. That this application is destitute of any merit, it is an abuse of the due process of the Honourable Court and solely made with a view to have endless litigation and as such, the same is fit for dismissal with costs,
 2. That the Applicant is guilty of concealing from this Honourable Court material facts and as such does not deserve the prayers sought.
 3. That after the judgment was delivered in Kimilili SPM Land Case NO. 43 of 2018 on 10th November 2022, the applicant has on two occasions filed applications in case at Kimilili Law Courts seeking to review the judgment.
 4. That the Applicant filed an application in Kimilili SPM Land Case NO. 43 of 2018 dated 18th April 2023 seeking for orders to review the judgment/Decree on the grounds of discovery of new evidence and which application through a Ruling delivered on the 24th July 2023 was dismissed with costs. I annex a copy of the application and my response thereto marked as JW-1 & 2 respectively.
 5. That upon the dismissal of the application dated 18th April 2023, I then through my advocate on record gave instructions to an auctioneer to obtain Court warrants to execute for costs which were awarded in the matter.
 6. That upon being served with the application by the Auctioneer seeking to attach the Applicant's property, the applicant went to Kimilili SPM Court in the very case being Kimilili



SPM Land Case NO. 43 of 2018 and filed another application dated 21st February 2021 seeking to again among other prayers review the judgment on record in that matter. I annex the said application marked as JW-3.

7. That I opposed the application by the Applicant in Kimilili case through a Replying affidavit sworn on the 12th of March 2025. I annex a copy of the Ruling marked as JW-4
8. That the application dated 21st February 2025 was again dismissed through a ruling delivered on the 17th April 2025. I annex a copy of the Ruling marked as JW-5.
9. That Courts are sanctuaries for record and as such, it is incumbent upon the applicant to bring forth the actual state of proceedings in the matter that he now seeks leave of the court to file an appeal out of time as choosing to hide the above information I believe was calculated to mislead this Court into granting the applicant prayers/orders that he doesn't merit.

Applicants Written Submissions

The Applicant did not file written submissions.

Respondents' Written Submissions.

The Respondent through the Firm of Millimo P.m & Associates filed submissions dated 11th August 2025 and argued that since the delivery of the impugned judgment on 10th November 2022, the Applicant has on two occasions moved the Kimilili Law Courts with applications seeking to review the judgment, one dated 18th April 2023 and another dated 21st February 2025 and that both applications were dismissed. He further submitted that after dismissal of the two applications for review, the applicant filed another suit at Bungoma Chief Magistrate's Court being Bungoma Cm-elc No. E137 Of 2024. Upon being served with Summons, the Respondent filed an application arguing that that suit was res-judicata. Upon hearing the application, the court agreed and struck out that suit. He submitted that the applicant cannot turn around and try to mislead the court that he had instructed his hitherto advocates to file an appeal when it is clear that he opted to pursue review of the judgment which was heard and concluded. He argued that having preferred a review of the impugned judgment, the applicant is estopped by the rules from filing an appeal over the same decision where he already filed review which was dismissed. That the Applicant had only one option after the application for review was dismissed to appeal against the ruling on the application for review.

In conclusion, the Respondent submitted that the applicant has not satisfied the requirements for the court to exercise its discretionary powers in granting the orders sought. He cited the case of ; HA V LB (2022) eKLR.

Legal Analysis And Decision.

5. I have considered the application, the grounds on the face thereof, the supporting affidavit, the Replying affidavit, the submissions and the applicable law. Section 79G of the [*Civil Procedure Act*](#) provides as follows;

“ 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 applicant 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.”

6. It is trite that where a party is dissatisfied with a judgment/decree or order of a subordinate court, he is required to lodge his/her appeal within thirty (30) days from the date the Decree/order was delivered/made. The law makes it mandatory that the aggrieved party must lodge the appeal within thirty (30) days. However, a window is given to the court to allow an appeal to be filed out of time on sufficient grounds. One of such ground of appeal out of time is where the appellant/applicant was unable to obtain the proceedings and the decree before the appeal period lapses. In this case, the applicant blames his hitherto advocate for failing to lodge appeal despite giving him instructions. However, the applicant has not reported the advocate to the Disciplinary Committee of the Law Society of Kenya for action. There is even no letter written by the applicant instructing his hitherto advocate that he was aggrieved and that he desired him to lodge appeal on his behalf. A payment receipt is not an instruction to appeal, considering that the applicant had numerous cases being handled by his hitherto advocate. I also note that the impugned judgment/decree was delivered on 10th November 2022. When the Applicant paid the sum of Kshs. 20,000/= on 13/04/2023, the statutory period of thirty days had already lapsed. It is now almost three years since the impugned judgment was delivered. I find a period of three years inordinate, inexplicable and unexplained. I also note from the materials placed before me that the applicant pursued an alternative remedy for the review of the judgment but was not successful.

In; The Chairman, Board Of Governors Highway Secondary School V William Mmosi Moi Civil Application No. 277 Of 2005 (UR), the court held as follows;

“The Board took an active part in giving instructions to the advocate on the various matters the advocate was pursuing before the superior court. In particular, the Board gave instructions that an application be filed for review of the ruling and it is the same ruling against which instructions had already been given for filing an appeal to the Court of Appeal. In those circumstances the options available to the Board were exhausted when the application for review was determined by the superior court and it is doubtful whether the intended appeal would be valid even if it was filed. An aggrieved party under Order 44 of the Civil Procedure Rules can apply for the review of a decree or Order either where no appeal has been preferred or where “no appeal is allowed”. An appeal is allowed on orders made under Order 9A rule 2 Civil procedure Rules, as in this case, and indeed the Board filed a notice of appeal under rule 74 of the rules to challenge the orders. A notice of appeal however is only a formal notification of an intention to appeal and it cannot be said that the aggrieved party has preferred an appeal at that stage and was thus precluded from exercising the option of review. The issue as to whether a respondent having filed a notice of appeal, which had not been withdrawn, was answered in the affirmative by the Court of Appeal in *Yani Haryanto Vs. E. D. & F Man (Sugar) Ltd Civil Appeal No. 122 Of 1992 (UR)*. The Board was at liberty to pursue the option of review of the orders despite the filing of a notice of appeal to challenge the same orders. However, upon the exercise of that option and pursuit therefrom until its conclusion, there would be no further jurisdiction exercisable by an appellate court over the same orders of the court. That was the end of the matter on the notice of appeal was rendered purposeless. Both options cannot be pursued concurrently or one after the other.”

7. I agree with the findings by the learned judge in the above decision. The upshot of my finding is that the Notice of Motion application dated 28th May 2025 is devoid of merit and the same is hereby dismissed with costs.
8. Orders accordingly.



READ, DELIVERED AND SIGNED AT BUNGOMA THIS 6TH DAY OF NOVEMBER, 2025.

HON. E.C CHERONO

ELC JUDGE

In the presence of;

Mr. were for the Applicant.

Respondent/Advocate-absent.

Bett C/A.

