



REPUBLIC OF KENYA



KENYA LAW
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**Nyamboga v Kenya Industrial Estates Limited & 6 others (Environment and Land
Miscellaneous Case E009 of 2025) [2025] KEELC 8137 (KLR) (26 November 2025) (Ruling)**

Neutral citation: [2025] KEELC 8137 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYAMIRA
ENVIRONMENT AND LAND MISCELLANEOUS CASE E009 OF 2025
DO OHUNGO, J
NOVEMBER 26, 2025**

BETWEEN

NICBON MOENGA NYAMBOGA APPLICANT

AND

KENYA INDUSTRIAL ESTATES LIMITED 1ST RESPONDENT

LAND REGISTRAR, NYAMIRA COUNTY 2ND RESPONDENT

LAND REGISTRAR, KISII COUNTY 3RD RESPONDENT

KITUTU CENTRAL SUB-COUNTY 4TH RESPONDENT

THE ATTORNEY GENERAL 5TH RESPONDENT

JOHN NYAMBOGA MORIASI 6TH RESPONDENT

RAEL MORAA NYAMBOGA 7TH RESPONDENT

RULING

1. By Notice of Motion dated 7th April 2025, the Applicant seeks the following orders:
 1. Spent
 2. That the Honourable court be pleased to issue an order of stay of the orders pending the hearing and determination of the application.
 3. That leave be granted to the Applicant to Appeal out of time.
 4. That the cost of and incidental to this Application be provided for.
2. The application is supported by an affidavit sworn by the Applicant's counsel, Stacy Nyaboke Bosire, and is based on the following grounds:



- a. That the Ruling was delivered on the 19th day of February, 2025 where the Advocate in conduct of the matter was in attendance.
 - b. That the Applicant instructed the Advocate to Appeal on the ruling later after that but the Advocate was taken ill and was scheduled for a surgery on the 10th day of March, which period formed part of the 30 days leave granted to appeal.
 - c. That the delay was not caused by the Applicant.
 - d. That the Applicant is ready and willing to fulfill any fair conditions that may be imposed by this Honourable Court.
 - e. That the Applicant's Intended Appeal is arguable and not frivolous.
 - f. That the Intended Appeal touches on the fundament (sic) right to a fair hearing on the part of the Applicant.
 - g. That the Respondents will not be prejudiced if this Application is allowed.
3. Ms Bosire deposed that the Applicant herein filed an application dated 28th November 2023 seeking setting aside of proceedings and judgement entered on 10th May 2023 in Nyamira CMELC No. E022 of 2021 and that she attended Court when ruling on the application was delivered on 19th February 2025 whereby the application dismissed. That the Applicant instructed her to Appeal against the ruling shortly after its delivery, but she was taken ill and was scheduled for surgery on 10th March, which fell during the 30 days within which to appeal and that the delay was not caused by the applicant but by herself.
 4. Ms Bosire further deposed that she was ready and willing to fulfil any fair conditions that the Court may impose and that the intended appeal is arguable.
 5. The First Respondent opposed the application through a replying affidavit sworn by Charity Mukami Ndeke, its Legal Manager who deposed that Rule 9 of the Advocates (Practice) Rules prohibits an advocate from swearing an Affidavit on behalf of his her client on contested facts that require production of evidence and to that end, the Application is fatally defective for want of a competent supporting Affidavit and ought to be struck out with costs.
 6. She further deposed that the Applicant had previously exhibited a pattern of indolence in the proceedings before the Subordinate Court and that a suit belongs to the litigant as opposed to his advocate and that in this case the Applicant had not demonstrated that he made any efforts to follow up on the execution of his instructions.
 7. The First Respondent went on to depose that the orders of stay sought in the Application will not serve any useful purpose as the title created and issued to Interested Parties over West Mugirango Nyamaiya 5748 and 5749 had already been cancelled and the mother title West Mugirango Nyamaiya 2400 in the name of the Sixth Respondent together with the Charge in favour of the first Respondent re-instated. She also deposed that that the intended appeal did not raise any arguable issues.
 8. The 2nd to 5th Respondents did not file any response. Instead, they relied on the 1st Respondent's replying affidavit. The 6th and 7th Respondents neither filed a response nor participated in the hearing of the application.
 9. The application was canvassed through written submissions. The Applicant filed submissions dated 18th September 2025 while the First Respondent filed submissions dated 12th August 2025.



10. The Applicant relied on Section 79G of the CPA which sets the timelines for filing an appeal from a subordinate court to the High Court at 30 days from the date on which the impugned judgment or order is made. Counsel pointed to *Wambui v Ngethe* [20231 KEHC 18414 (KLR)] and submitted that whether or not to grant a party an extension of time to file an appeal is purely discretionary, which discretion ought to be exercised judicially.
11. The First Respondent on the other hand relied on Order 42 Rule 6 (2) of the Civil Procedure Rules and the case of *Jepchirchir v Chemwor* (Civil Appeal No. E090 of 2024) and submitted that the Applicant had not demonstrated any substantial loss that would be suffered should an order of stay be denied. The application had been brought at a late stage, and no security had been offered and in light of these deficiencies, the application lacked merit and the prayer for stay ought not to be granted.
12. Counsel also cited the cases of *Nicholas Kiptoo Korir arap Salat v IEBC & 7 Others* and *Leo Sila Mutiso v Rose Hellen Wangari Mwangi* Civil Application No Nai 255 of 1997 stating that the court had unfettered discretion and the only concern was whether justifiable cause had been shown. That the Applicant's advocate's surgery occurred in the last week of the window for appeal and that in the circumstances, the Applicant had ample time to appeal. The First Respondent therefore urged the Court to dismiss the application with costs.
13. I have carefully considered the application, the affidavits, and the submissions. The issues that arise for determination are whether leave to file an appeal out of time should be granted and who should bear costs of the application.
14. The Applicant is seeking leave to file an appeal out of time against the ruling and order of the Subordinate Court made on 19th February 2025 in *Nyamira MCELC No. E022 of 2021* (Hon. C I Agutu (SRM)). Pursuant to Section 16A (1) of the *akn ke act 2011 19 Environment and Land Court Act, 2011*, an appeal from the subordinate court to this court is to be filed within 30 days of delivery of the judgment or ruling. Further, Section 16A (2) of the Act gives this Court jurisdiction to admit an appeal out of time if the Appellant satisfies the court that he had a good and sufficient cause for not filing it in time.
15. The First Respondent has taken issue with the Applicant's counsel swearing the affidavit in support of the application. While the general position is that an advocate should not swear an affidavit on behalf of her client in contested facts, I note that the circumstances of the application called for the advocate explaining facts which only she could depose to: her health and the ensuing medical procedure. I find nothing wrong with the course taken by the advocate. She deposed to facts peculiarly within her knowledge.
16. The Supreme Court stated as follows in the case of *Nicholas Kiptoo Arap Korir Salat v Independent Electoral and Boundaries Commission & 7 others* (supra), regarding the principles applicable to an application for enlargement of time:

This being the first case in which this Court is called upon to consider the principles for extension of time, we derive the following as the underlying principles that a Court should consider in exercise of such discretion:

1. 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;
2. A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the court



3. Whether the court should exercise the discretion to extend time, is a consideration to be made on a case to case basis;
 4. Whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the Court;
 5. Whether there will be any prejudice suffered by the respondents if the extension is granted;
 6. Whether the application has been brought without undue delay;
17. Considering the date of delivery of the ruling, any appeal against it ought to have been filed by 21st March 2025. Counsel for the Applicant has explained that she was taken ill and was scheduled for surgery on 10th March 2025. The facts of her sickness and medical procedure have not been contested. I note that she has exhibited a copy of a medical note which states that she was discharged on 14th March 2025 and given two weeks sick off. Thus, the date of resumption of work fell after expiry of the period within which the appeal ought to have been filed.
18. The present application was filed on 7th April 2025, which was just about a week after the scheduled resumption of work. As for the First Respondent's contention that the Applicant did not make any efforts to follow up on the execution of his instructions, I note that the delay was not such as would have raised concerns with the client and hence make him to take own initiative.
19. Given the circumstances, the delay of about two weeks is reasonable and has been sufficiently explained. The Respondents have not demonstrated any prejudice beyond that which can be compensated by an award of costs.
20. I find merit in Notice of Motion dated 7th April 2025. In the result, I make the following orders:
- a. Leave is granted to the Applicant to appeal out of time against the ruling and order of the Subordinate Court made on 19th February 2025 in Nyamira MCELC No. E022 of 2021.
 - b. The Memorandum of Appeal be filed and served within 7 (seven) days from the date of delivery of this ruling.
 - c. Costs of the application shall abide the outcome of the appeal .

DATED, SIGNED, AND DELIVERED AT NYAMIRA, THIS 26TH DAY OF NOVEMBER 2025.

D. O. OHUNGO

JUDGE

Delivered in the presence of:

Ms Nyaenya for the Applicant

Ms Terer for the 1st Respondent

Mr Rana for the 2nd to 5th Respondents

No appearance for the 6th and 7th Respondents

Court Assistant: B Kerubo

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