



Oduor (Suing as the Legal Administrator to the Estate of Oduor Gaula (Deceased)) v Omog & 3 others (Environment and Land Miscellaneous Case E008 of 2025) [2025] KEHC 17474 (KLR) (27 November 2025) (Ruling)

Neutral citation: [2025] KEHC 17474 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT SIAYA
ENVIRONMENT AND LAND MISCELLANEOUS CASE E008 OF 2025**

AE DENA, J

NOVEMBER 27, 2025

**IN THE MATTER OF AN INTENDED APPEAL BETWEEN
PETRONILA ACHIENG ODUOR (SUING AS THE LEGAL
ADMINISTRATOR TO THE ESTATE OF ODUOR GAULA**

BETWEEN

**PETRONILA ACHIENG ODUOR APPELLANT
SUING AS THE LEGAL ADMINISTRATOR TO THE ESTATE OF ODUOR
GAULA (DECEASED)**

AND

**PIUS ODUOR OMOG 1ST RESPONDENT
THE SUB-COUNTY, LAND REGISTRAR 2ND RESPONDENT
THE SUB-COUNTY SURVEYOR UGENYA SUB-COUNTY .. 3RD RESPONDENT
THE HON ATTORNEY GENERAL 4TH RESPONDENT**

RULING

1. The subject of this ruling is the application dated 18 2 2025 seeking the following orders
 1. Spent
 2. That the Applicant be granted leave to Appeal out of time.
 3. That pending the hearing and determination of this Application inter-parties, this Honourable Court be pleased to grant an order of stay of execution of the Ruling and any



consequential orders issued from the ruling of Ukwala MCELC E048 2024 delivered in 6th October, 2024 by Honourable Edward Tsimonjero.

4. That the costs of this Application be provided for.
2. The application is premised on the following verbatim grounds:-
 - a). On the 6th October, 2024 the lower Court delivered a ruling against the Applicant and went ahead and set the main suit for hearing on the 5th May, 2025.
 - b). The Application that was dismissed by the lower Court goes to the root of the main suit hence the same ought not to proceed until this Application is heard and determined.
 - c). The Appeal has good chances of success and the delay in filing was inadvertent and excusable.
 - d). The Application is brought in good faith and as such no prejudice shall be suffered by the Respondent if the Application is allowed.
 - e). The Applicant is willing to abide by any reasonable and just consideration that thus Court may impute in allowing the Application.
 3. The application is supported by the affidavit sworn by Petronila Achieng Oduor the applicant. It is averred that on 6th October, 2024 a ruling was delivered by Honourable Edward Tsimonjero in which held that the applicants application was an abuse of the Court process. That though she was informed by counsel on the timelines for filing an appeal she was financially constrained.
 4. The applicant depones that she is seventy (70) year old widow, peasant farmer of narrow means and after struggling to raise funds for the lower Court case she needed time to sell her farm produce and seek help from relatives before she could further instruct her Advocate to proceed with the Appeal. A copy of her ID Card is annexed.
 5. That she is aware that the ruling was made available on 7 11 2024 approximately sixty (60) days since the ruling was delivered which is out of time to file the Appeal. Her belief is she has an arguable Appeal with high chances of success and the same ought to be heard on merit after she has struggled to pull together resources for the Appeal despite the current difficult economic challenges arising from the government policies. A draft Memorandum of Appeal is attached.
 6. It is averred the dismissed Application dated 7th October, 2024 goes to the heart of the main suit as the disputed area ought to be surveyed as it is the claim in the suit and should this Application and subsequent Appeal fail the lower Court's case will be dead from the outset rendering the entire suit nugatory and denying her an opportunity to be heard on the claim of part of Land Parcel Number East Ugenya Jera 1052.
 7. That the ultimate goal and purpose of the justice system is to hear and determine disputes fully and that no person who has approached the Court seeking an opportunity to ventilate her grievances should be locked out. That the Respondents do not stand to suffer any prejudice.
 8. Mr. Jonyo Counsel for the applicant also filed an affidavit in support of the urgency confirming his advice to the applicant on the timelines to file an appeal in the event she desired to do so. The deponent reiterated the financial constraints as enumerated by the applicant. That she had struggled to pay legal fees in the trial court. That she made part payment on 18 02 2025 when he immediately prepared the application. That there is an arguable appeal and the respondent will not suffer any prejudice. The applicant being 70 years will be deprived of her right to own property.



Replying Affidavit

9. The application was opposed vide the replying affidavit of Pius Oduor Omog. It is averred that the application to appeal out of time is not grounded on material facts as the advocate for appellant is simply accusing himself of not acting in time despite being paid by his client. That the same counsel is on record and normally attends court on the main suit namely Ukwala PMC ELC CASE NO. E048 OF 2024.
10. That it is on record that the same counsel did represent the appellant on the previous closed Ukwala PMC ELC CASE NO. E002 OF 2024. That the counsel can not pretend that he was so poor and unable to swap the money paid to him on the 2 cases and utilize it to pay Kenya shillings 2,500 = being the only requisite fee for his intended appeal within the time stipulated in law.
11. It is contended that the intended appeal herein has nearly zero chances of success and the reasons are enumerated giving the events in the previous suit. Further that the application being appealed herein was not required to be filed under the main suit herein namely Ukwala ELC CASE NO. E048 of 2024 as the same is res judicata on grounds that the same matter had already been dealt with and dispensed of by the Ukwala PMC E002 OF 2024 and not this matter. The Ukwala PMC ELC E048 OF 2024 being the main suit and the subject of this appeal did dismiss the application being appealed herein on grounds of the stipulations in paragraph 12 herein above based on res judicata.
12. The 2nd and 3rd defendants did not participate in the application.

Submissions

13. The application was canvassed by way of written submissions. The applicants submissions are dated 30 6 2025 which I have considered. The 1st respondent submissions were not on record and the court proceeded on the basis of the replying affidavit.

Analysis And Determination

14. The main issue for determination is whether the applicant has met the threshold for grant of the orders sought.
15. Section 79G of the *kenya law of 1924 3 Civil Procedure Act*, provides as follows on the power of the court to extend time: -

“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:

 - i. 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.”
16. Arising from the above provisions the court is thus required to be satisfied if there were good reasons for the delay. It is noteworthy that the power to enlarge time is at the discretion of the court. Guidance on the exercise of this discretion has been enunciated in many judicial decisions.



17. Odek JJA in Edith Gichungu Koine Vs Stephen Njagi Thoithi [2014] eKLR stated thus:
- “... Nevertheless, it ought to be guided by consideration of factors stated in many previous decisions of this court including, but no limited to, the period of delay, the reasons for the delay, the degree of prejudice to Respondent if the application is granted, and whether the matter raises issues of public importance, amongst others.”) Emphasis is mine)
18. The Supreme Court stated in Nicholas Kiptoo Arap Korir Salat v Independent Electoral and Boundaries Commission & 7 others [2014] eKLR thus:-
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; and ether in certain cases, like election petitions, public interest should be a consideration for extending time. "
19. The main reason advanced by the applicant is that she was indeed informed of the statutory timelines within which to file an appeal. However, she was impecunious and had to sell farm produce to raise funds. The question is whether this is sufficient cause for the delay. Guided by the case law above it is clear that each case is decided upon its own facts and merits. For me I would look at this as an issue of access to justice and in this case a right of appeal. If she had made effort to raise legal fees then she should not be shut out from the seat of justice for a delay of 60 days against the 30 days within which she was required to file an appeal.
20. It has been urged that the appeal stands very slim chances of success. It is trite that an arguable appeal need not be one that must necessarily succeed. See Gicharu v Waweru [2025] KEHC 2565 (KLR) The parties must not at this point delve into the merits of the appeal.
21. But of utmost importance is whether granting the leave herein would cause prejudice to the respondent which may not be compensable by costs. The burden of proof in this regard lay with the 1st respondent. The respondent was silent on the issue as rightly canvassed in the applicants submission. Having not discharged this burden the court will infer that no prejudice will be suffered which cannot be compensated by way of costs.
22. The applicant further seeks an order of stay of execution of the ruling and any consequential orders issued from the ruling delivered on 6 10 2024.
23. Order 42 Rule 6 of the Civil Procedure Rules, provides as follows:-
- “(1) No appeal or second appeal shall operate as a stay of execution or proceedings under a decree or order appealed from except in so far as the court appealed from may order but, the Court Appealed from may for sufficient cause order



stay of execution of such decree or order, and whether the application for such stay shall have been granted or refused by the court appealed from, the court to which such appeal is preferred shall be at liberty, on application being made, to consider such application and to make such order thereon as may to it seem just, and any person aggrieved by an order of stay made by the court from whose decision the appeal is preferred may apply to the appellate court to have such order set aside.

- (2) No order for stay of execution shall be made under subrule (1) unless—
- (a) the court is satisfied that substantial loss may result to the applicant unless the order is made and that the application has been made without unreasonable delay; and
 - (b) such security as the court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the applicant.

24. Arising from the above, substantial loss is the main parameter to be demonstrated by an applicant desiring orders of stay of execution of the decree of the court. The court in Bungoma High Court Misc Application No 42 of 2011 - James Wangalwa & Another vs. Agnes Naliaka Cheseto had this to say on substantial loss;-

“The applicant must establish other factors which show that the execution will create a state of affairs that will irreparably affect or negate the very essential core of the Applicant as the successful party in the appeal. This is what substantial loss would entail.”

25. The Court of Appeal in the case of Mukuma vs Abuoga (1988) KLR 645 stated that “Substantial loss is what has to be prevented by preserving the status quo because such loss would render the Appeal nugatory.”

26. I think the court must consider whether failure to grant the stay will render the appeal nugatory. According to the applicant the application goes to the heart of the main suit as she states the disputed area has to be surveyed being the claim in the suit and will render the appeal nugatory if it succeeds. I will not go into the merits of the appeal at this stage. The court is persuaded that if the orders are not stayed then, the hearing of the suit will proceed rendering the appeal nugatory.

27. On security the decree is not monetary and I will not make any orders for security.

28. The upshot is that I find the application merited and it is disposed in the following terms;-

1. That the Applicant be and is hereby granted leave to Appeal out of time.
2. That pending the hearing and determination of the appeal an order of stay of execution of the Ruling and any consequential orders issued from the ruling of Ukwala MCELC E048 2024 delivered in 6th October, 2024 by Honourable Edward Tsimonjero hereby issues.
3. That the appeal shall be filed based on the annexed Memorandum of Appeal within 14 days of these orders, failure to which leave shall automatically lapse together with the orders in (2) above.
4. That the costs of the application shall abide the outcome of the appeal.

Orders accordingly



DELIVERED AND DATED AT SIAYA THIS 27TH DAY OF NOVEMBER 2025

HON. LADY JUSTICE A.E. DENA

JUDGE

27 11 2025

Ruling delivered virtually through Microsoft teams Video Conferencing Platform in the presence of:

Mr. Onyango for the Applicant

N A for 1st Respondent

N A for 3rd & 4th defendant

Court Assistant: Ishmael Orwa

