



**Kenya African National Traders and Farmers Union (KANTAFU) v Rufus
& another; Murage (Interested Party) (Environment and Land Miscellaneous
Application E011 of 2025) [2025] KEELC 5711 (KLR) (30 July 2025) (Ruling)**

Neutral citation: [2025] KEELC 5711 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E011 OF 2025
NA MATHEKA, J
JULY 30, 2025**

BETWEEN

**KENYA AFRICAN NATIONAL TRADERS AND FARMERS UNION
(KANTAFU) APPLICANT**

AND

PETER KARIUKI RUFUS 1ST RESPONDENT

GRACE YUMBYA MUTUTO 2ND RESPONDENT

AND

ESTHER WAITHERERO MURAGE INTERESTED PARTY

RULING

1. The application is dated 13th February 2025 and is brought under Sections 3A, 79G, 95 and 63(e) of the *Civil Procedure Act* and Order 22 Rule 52, Order 50 Rule 6 of the *Civil Procedure Rules*, 2010 seeking the following orders;
 1. That this Application be certified as urgent and be heard on priority basis.
 2. That pending the hearing and determination of the Application herein there be a stay of execution and/or continued execution aspects of the Decree dated 4th February, 2025 to the extent that it unprocedurally and unlawfully condemns the Applicant/Appellant to bear costs of the suit.
 3. That pending the hearing and determination of the intended appeal herein there be a stay of execution and/or continued execution aspects of the Decree dated 4th February, 2025 to the extent that it unprocedurally and unlawfully condemns the Applicant/Appellant to bear costs of the suit.



4. That the purported Appellant be granted leave to appeal out of time against the issue of costs arising from variation, alteration and/or changing of the terms of the Judgment of the court delivered on 25th November, 2024.
 5. That the Memorandum of Appeal annexed hereto be deemed as duly filed and served upon the Respondents and Interested Party within the prescribed time.
 6. That the costs of this Application be provided for.
2. It is based on the following grounds and further supported by the annexed Affidavit of Ibrahim Wanene Kiingati and on grounds that on 25th November, 2024, the Principal Magistrate Court at Kangundo delivered the Judgment in Kangundo MCELC No E055 of 2021- Peter Kariuki Rufus v Grace Yumbya Mututo and Esther Waitherero Murage as Interested Party and the Applicant/Appellant as the third party and in the Judgment the Honourable Court condemned the 2nd Respondent (the Defendant in the suit) to pay the costs.
 3. That a Judgment once signed shall not afterwards be altered or added to save as provided by Section 99 of the Civil Procedure Act or on review. The Decree shall agree with the Judgment, it shall contain the number of the suit, the names and descriptions of the parties, and particulars of the claim, and shall specify clearly the relief granted or other determination of the suit. Aspects of the Decree dated 4th February, 2025 to the extent that it unprocedurally and unlawfully condemns the Applicant/Appellant to bear costs of the suit is in total contradiction of the Judgment of 25th November, 2024, which had condemned the 2nd Respondent (the Defendant in suit) to pay the costs. The intended Applicant's/Appellant's Appeal is barred due to lapse in time by 30 days and it is necessary to seek leave to file the Appeal out of time. The Applicant/Appellant delay in lodging the appeal was purely on the basis that the Decree that varied, reviewed, altered and/or changed the terms of its Judgment to unprocedurally and unlawfully condemn the Applicant/Appellant to bear costs was issued on 4th February, 2025.
 4. Unless the Application is certified as urgent and the stay of execution and/or continued execution of the Decree dated 4th February, 2025 granted, the appeal herein will be rendered nugatory or futile exercise and the Appellant will suffer injustice unjustifiable and unprocedural condemnation to bear costs even though it was just periphery party to the proceedings. It is in the interest of justice for the orders sought to be issued in order to protect the Applicant/Appellant from the absolute worst scenario where it shall bear costs yet it was just a periphery party to the proceedings.
 5. The 1st Respondent submitted that the mistake was on the part of the court because the costs were to be borne by the 3rd party. The 2nd Respondent stated that the correction made by the court on the 3rd February 2025 was a lawful rectification under section 99 of the Civil Procedure Act and not a variation or alteration that can give rise to a fresh appeal.
 6. This court has considered the application and submissions therein. Section 79G of the Civil Procedure Act is the operative part in answering the question whether the prayer to enlarge time to file the appeal is merited. Section 79G of the Civil Procedure Act provides that:

“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.”



7. From the provision above, it is noteworthy that the phrase used is “an appeal may be admitted out of time”. This therefore means that an appeal may indeed be admitted out of time. However, the intended appeal ought to have already been filed before or together with an application seeking leave to extend time for filing an appeal. In *Mugo & others v Wanjiru & another* (1970) EA 482 the court stated as follows;

“Clearly, as a general rule the filing and service of the notice of appeal ought to be regularised before or at least at the same time as an application is made to extend the time for filing the record and the fact that this has not been done might be a reason for refusing the application or only allowing one on terms as to costs. But it does not mean that such an application must be refused.”

8. The Court of Appeal in the above case guided that whenever an application for extension of time is before a court, the court ought to take into account several factors as observed by Odek JJA in *Edith Gichungu Koine v Stephen Njagi Thoithi* (2014) eKLR thus;

“Nevertheless, it ought to be guided by consideration of factors stated in many previous decision 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.”

9. The Court of Appeal further guided that there is also a duty imposed on courts to ensure that the factors considered are consonant with the overriding objective of civil proceedings litigation, that is to say, the just, expeditious, proportionate and affordable resolution of disputes before the court. In *Nicholas Kiptoo Arap Korir Salat v Independent Electoral and Boundaries Commission & 7 others* (2013) eKLR the court held as follows;

- (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 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 respondent of the extension is granted.
- (6) Whether the application has been brought without undue delay; and
- (7) Whether uncertain cases, like election petition, public interests should be a consideration for extending time.”

10. I have given due consideration of the record in light of the pleadings, submissions, and principles that guide the court. The reason given for the delay in filing the appeal is that on 25th November, 2024, the Principal Magistrate Court at Kangundo delivered the Judgment in Kangundo MCELC No E055 of 2021- Peter Kariuki Rufus v Grace Yumbya Mututo and Esther Waitherero Murage as Interested Party and the Applicant/Appellant as the third party and in the Judgment the Honourable Court condemned the 2nd Respondent (the Defendant in the suit) to pay the costs. The Decree that varied, reviewed, altered and/or changed the terms of its Judgment to unprocedurally and unlawfully



condemn the Applicant/Appellant to bear costs was issued on 4th February, 2025. The Applicant has annexed the draft Memorandum of Appeal. I find that this application was filed on 14th February 2025. I find that the applicant does have an arguable appeal. I also find that the applicant is not guilty of inordinate delay in the circumstances. I find this application is merited and I grant prayer 4 & 5 on condition that the appeal is filed and served within the next 30 days. Costs to be in the cause.

11. It is so ordered.

DELIVERED, DATED AND SIGNED AT MACHAKOS THIS 30TH DAY OF JULY 2025.

N.A. MATHEKA

JUDGE

