



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT CHUKA**

**ELCL MISC APPLICATION NO. E012 OF 2025**

**JOSEPH KIBUI KANGANGI.....**

**.....APPLICANT**

**=VERSUS=**

**PAUL MUGAMBI**

**MUNGANIA.....RESPONDENT**

**RULING**

1. Falling for determination in this ruling is the notice of motion dated 14/7/2025, brought by **Joseph Kibui Kingangi** [*the applicant*]. Through it, the applicant seeks: (i) an order enlarging the time within which to lodge an appeal against the ruling rendered on 29/5/2025 in **Marimanti E & L Case No.3 of 2014**; and (ii) an order staying execution of the judgment and consequential orders in the said case pending the hearing and determination of an intended appeal.
2. The application was premised on the grounds set out in the motion; in the applicant's supporting affidavit dated 14/7/2025; and in the applicant's undated supplementary affidavit. It was canvassed through written submissions

dated 23/10/2025, filed by **M/s Thuranira Atheru & Co Advocates**.

- 3.** The case of the applicant is that, he filed an application dated 25/10/2024 in the trial court, seeking to set aside the ex parte judgment delivered in the case on 30/10/2014. He contends that he was never served with summons nor notified about the case, to enable him file a defence and contest the claim. The trial court delivered a ruling on the said application on 29/5/2025 and dismissed the application. He was dissatisfied with the said ruling. He was keen to lodge an appeal but the ruling had not been typed by the trial court.
- 4.** The applicant states that his counsel wrote a letter to the Principal Magistrate Court at Marimanti, requesting to be supplied with a copy of the said ruling to enable him file a memorandum of appeal, but the same was not availed. His counsel advised him to file the instant application as he waited for the ruling. He has an arguable appeal with high chances of success and if the application is not allowed, he will be prejudiced because he will not have any other forum through which to pursue his defence.
- 5.** The applicant contends that the ex-parte judgment which was delivered on 30/10/2014 declared the respondent the owner of land parcel number **1419 Chiakariga**, adding that he has lived on the land all along. He further states that it is in the interest of justice that the judgment is stayed pending

the hearing and determination of the intended appeal. He adds that the respondent will suffer no prejudice if the application is allowed.

- 6.** The respondent opposed the application through his replying affidavit sworn on 22/9/2025 and written submissions dated 30/10/2025, filed by **M/s David John Mbaya & Co Advocates**. The respondent's case is that the application is defective and is an afterthought meant to prevent him from enjoying the fruits of the judgment rendered by the trial court on 30/10/2014 in **Marimanti ELC No.3 of 2014**. He contends that the application is a non-starter because there is nothing to stay, adding that what was rendered in the impugned ruling was a negative order. The respondent states that whereas the applicant requested the ruling vide a letter dated 19/6/2025, he never made a follow-up, hence the delay was intentional.
- 7.** The respondent argues that the applicant has not exhibited any receipt to demonstrate that he paid for the typed proceedings and for the certified ruling. The respondent adds that the delay in filing the current application has not been explained, adding that the applicant does not deserve the discretionary reliefs sought in the application.
- 8.** The court has considered the application; the response to the application; and the parties' respective submissions. The court has also considered the relevant legal frameworks and jurisprudence. The following are the two key issues that fall for determination in this ruling: (i) Whether the criteria for enlargement of time for lodging an appeal in this court has

been satisfied; and (ii) Whether the criteria for granting an order of stay of execution by this court pending the hearing and disposal of an appeal by the court has been met. I will analyse and dispose the two issues sequentially in the above order

9. The limitation period for lodging an appeal before this court against decisions of lower courts is contained in **Section 16A** of the **Environment and Land Court Act** and **Section 79G** of the **Civil Procedure Act**. The frameworks in the two statutes provide for a limitation period of 30 days from the date of delivery of the impugned decision. The two frameworks vest in this court discretionary jurisdiction to enlarge the limitation period. The legislated guiding principle in the two frameworks is that the discretionary jurisdiction should be exercised on the basis of good and sufficient cause.
10. The general jurisprudential principles that guide our courts whenever invited to exercise the above jurisdiction were outlined by the Supreme Court of Kenya in the case of ***Nicholas Kiptoo Arap Korir Salat v Independent Electoral and Boundaries Commission & 7 Others (2014) eKLR*** as follows:

***“1. Extension of time was not a right of a party. It was an equitable remedy that was only available to a deserving party at the discretion of the court;***

**2. A party who sought extension of time had the burden of laying a basis for it to the satisfaction of the court;**

**3. Whether the court ought to exercise the discretion to extend time, was a consideration to be made on a case to case basis;**

**4. Whether there was a reasonable reason for the delay, which ought to be explained to the satisfaction of the court;**

**5. Whether there would be any prejudice suffered by the respondents if the extension was granted;**

**6. Whether the application had been brought without undue delay; and;**

**7. Whether in certain cases, like election petitions, public interest ought to be a consideration for extending time.”**

**11. In *Mukora Mwangi v Charles Gichina - Civil Application No. Nai 255 of 1997*, the Court of Appeal summed up the following relevant principle:**

**“It is now well settled that the decision whether or not to extend the time for appealing is essentially discretionary. It is also well-settled that, in general, the matters which this court takes into account in deciding whether to grant an enlargement of time are:**

***first, the length of the delay; secondly, the reason for the delay; thirdly (possibly), the chances of the appeal succeeding if the application is granted; and fourthly, the degree of prejudice to the respondent if the application is granted.”***

- 12.** What is the length of delay in the present application? The ruling that is the subject of the present application was rendered on 29/5/2025 and the application was presented on 15/7/2025. This is a delay of 46 days. Barring any other factors, a delay of 46 days may not appear inordinate.
- 13.** Has the applicant tendered a satisfactory explanation for the above delay? The explanation tendered by the applicant is that upon the trial court rendering the ruling on 29/5/2025, he made a formal request for a certified copy of the ruling on 19/6/2025 but the copy was not availed to him. On his part, the respondent faults the applicant for not doing a diligent follow-up and argues that there is no evidence that the applicant paid for the certified copy of the ruling.
- 14.** The applicant exhibited a letter dated 19/6/2025 through which he allegedly applied for a certified copy of the impugned ruling. There is, however, no evidence to suggest that he paid the requisite court fees to enable the Court Registry process the request. The Court Registry would not process the request and supply the certified copy of the ruling without the applicant paying the requisite court fees or obtaining the requisite exemption. For this reason, the court

is not satisfied that the applicant has tendered a satisfactory explanation for the delay.

**15.** Has the applicant demonstrated that he has arguable grounds of appeal? The applicant exhibited a draft memorandum of appeal in which he faults the trial court for failing to take into account the fact that he (*the applicant*) was not notified about the suit. He did not, however, exhibit a draft defence which would inform the court's exercise of discretion in an application of this nature. The draft defence was necessary because the two parties to this application have gone through two different but binding and conclusive dispute resolution processes relating to the question of ownership of the suit land. The first conclusive and binding process involved dispute resolution on the question of ownership under the **Land Adjudication Act**. The climax was an appeal to the Minister under **Section 29** of the **Land Adjudication Act**. The appeal was disposed by the Minister in 2017. The Minister held that the respondent (**Paul Mugambi Mungani**) was the legitimate owner of the suit land.

**16.** The applicant subsequently brought **Chuka ELCL (OS) Case No E005 of 2024** against the respondent, in which he recognized the validity of the title of the respondent but claimed to have acquired the said title through adverse possession of the suit land. After a lengthy trial, not too long ago, this court (**Eboso J**) rendered a judgment in the case on 28/10/2025 and held that the applicant had failed to satisfy the essential elements of adverse possession. This court

- adjudged the respondent to be the legitimate owner of the suit land.
- 17.** Given the above background, it was necessary for the applicant to exhibit his draft defence to demonstrate to the court what it is that entitles him to be on the suit land after the Minister's decision of 2017 and after this court's judgment of 28/10/2025. He has not done that.
  - 18.** On the likely prejudice, there subsist two binding legal pronouncements on the question of ownership and occupation of the suit land. Having failed to exhibit a draft of the defence that he has, and taking into account the subsisting award of the Minister and the recent judgment of this court, I do not think the applicant has demonstrated any legitimate case of likely prejudice. Consequently, the finding of the court is that the application under consideration does not meet the criteria for enlargement of time.
  - 19.** Does the application meet the criteria for granting an order of stay of execution? The plea for leave to bring an appeal out of time has been declined. There is, therefore, no basis for an order of stay of execution pending the hearing and disposal of the intended appeal.
  - 20.** The result is that the application dated 14/7/2025 fails and is dismissed for lack of merit. In tandem with the general principle in **Section 27** of the **Civil Procedure Act**, the applicant shall bear costs of the application.

**DATED, SIGNED AND DELIVERED AT CHUKA THIS 11TH DAY OF DECEMBER, 2025.**

**B M EBOSO [MR]**

**ELC JUDGE**

**In the Presence of:**

Mr. Thurania Athiru for the Applicant

Mrs. Maheli for the Respondent

Court Assistant - Mwangi

ORIGINAL