

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MAKUENI
ELC MISC APPL. NO. E006 OF 2023
MUKULU MUIA.....PROPOSED APPELLANT
-VERSUS-
JOSEPH MBITHI KING'OKU.....PROPOSED RESPONDENT
RULING

1. This is a ruling in respect of a notice of motion dated 22nd May, 2025 in which the Proposed Appellant/Applicant seeks the following orders:

1) That the orders issued on 5th December, 2024 by this honourable court to the Applicant for leave to file appeal out of time be extended to enable the proposed Appellant/Applicant file an appeal against the whole judgment of Honourable M. Mutua, Senior Resident Magistrate delivered on 29th September, 2023 in MCELC No. E013 of 2021.

2) That the costs of this application be provided for.

2. The Applicant was aggrieved with the judgment of Hon. Martin N. Mutua (SRM) delivered on 29th September, 2023 in ELC No. E013 OF 2021. She prepared a memorandum of appeal dated 27th October, 2023 and proceeded to Makueni ELC registry to file the same on 30th October, 2023. She was advised at the registry that she was already out of time and that she first had to apply for leave to file appeal out of time.

3. On 29th November, 2023, the Applicant filed a notice of motion seeking extension of time. The application was disposed of by way of written submissions. A ruling was reserved for 27th November, 2024. The ruling was not delivered on 27th November, 2024. The same was however delivered on 5th December, 2024 in the presence of counsel for Respondent. The Applicant was not present on 5th December, 2024.

4. The Applicant contends that she did not get access to the ruling. On 29th May, 2024 she was advised by a registry staff to check on the outcome of her application dated 29th November, 2023 on 27th December, 2024. On 27th

December, 2024, she attended the registry where she was informed to check on 19th February, 2025. On 19th February, 2025, she went to the registry where she was advised to keep checking. It is at this time that she decided to go and contact the Makeni Governor.

5. The Applicant through assistance of the office of the governor obtained a copy of the ruling where it turned out that ruling had been delivered on 5th December, 2024 whereby she had been given 21 days within which to file a memorandum of appeal and record of appeal. She states that failure to file appeal and record of appeal within the timelines given was not deliberate.
6. The Applicant's application was opposed by the Respondent based on a replying affidavit sworn on 19th June, 2025. The Respondent contends that the Applicant's application is vexatious and is an abuse of the process of court. The Respondent states that he is not responsible for the Applicant's failure to access the ruling of 5th December, 2024 and that the Applicant is out to delay this matter where the Respondent was the successful litigant.
7. The Respondent states that the Applicant was in court 29th May, 2024 when ruling was reserved for 27th November, 2024 and has not explained which efforts she made to ascertain what became of the application which she had presented in court. The Respondent states that there is a delay of 6 months which has not been explained.
8. The parties were directed to file written submissions. The Applicant filed her submissions dated 15th July, 2025. The Respondent filed submissions dated 18th July, 2025.
9. I have considered the Applicant's application, the opposition thereto by the Respondent as well as the submissions filed. The only issue for determination is whether the Applicant has explained the delay in complying with the orders of 5th December, 2024.
10. To begin with, I must state that the Applicant was put into an unnecessary application for extension which should not have been the case had the

registry staff applied property the law on computation of time. The impugned judgment was delivered on 29th September, 2023. The Applicant had 30 days to file a memorandum of appeal. The 30 days expired on 29th October, 2023 which was on a Sunday. As per the provisions of Order 50 Rule (3) of the Civil Procedure Rules, the Applicant ought to have been allowed to file her memorandum of appeal on 30th October, 2023 which was the immediate working day after the Sunday of 29th October, 2024. However, because of the ignorance of the staff of this provision, the Applicant was put in an unnecessary exercise of extension of time. However, that is now water under the bridge.

11. Extension of time is a matter of discretion of the court. There are numerous decisions of the Superior Courts which give a guide of what is to be considered. One of these decisions is a Supreme Court decision in **Nicholas Kiptoo Arap Korir Salat –vs- The Independent Electoral and Boundaries Commission and others (2014) eKLR** where it was stated 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.**

12. The record shows that the ruling was supposed to be delivered on 27th November, 2024 but it was not delivered. I am aware that judges were attending a conference on Climate Justice at Eldoret. There is no record

whether the applicant was informed of the postponement of the ruling to 5th December, 2024. The record shows that the Applicant was not present on 5th December, 2024 when ruling was delivered.

13. The Applicant has explained that she kept checking on the state of her application but she was advised to keep checking. When she sought the intervention of the Makueni governor, she obtained a copy of the ruling and by this time the time for filing the appeal and record was long gone. I have no reason to doubt the Applicant given her previous experience with the registry staff who misled her into seeking extension on a matter which should not have gone that way.

14. The Applicant appears in person. She has ably explained the cause of the delay. I therefore find that her application is meritorious. I allow the same and direct that she files the appeal within 21 days. The record of appeal shall be compiled and filed within 14 days of obtaining typed proceedings. Ordinarily, costs for extension of time is supposed to be borne by the Applicant but in the circumstances of this case, the Applicant would not have undergone the agony of seeking extension had the registry staff properly computed time. I will for this reason direct that each party do bear their own costs.

It is so ordered.

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HON. E. O. OBAGA

JUDGE

RULING DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS THIS 18TH DAY OF DECEMBER, 2025.

IN THE PRESENCE OF:

M/s Kyalo for Respondent

Plaintiff - present in person

Court Assistant - Steve Musyoki