



National Land Commission v Mississippi Water Limited (Environment and Land Appeal E188 of 2025) [2025] KEELC 8563 (KLR) (9 December 2025) (Ruling)

Neutral citation: [2025] KEELC 8563 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND APPEAL E188 OF 2025**

**JG KEMEI, J
DECEMBER 9, 2025**

BETWEEN

NATIONAL LAND COMMISSION APPLICANT

AND

MISSISSIPI WATER LIMITED RESPONDENT

(In respect of the application dated 25/9/25 seeking extension of time to file an appeal out of time and stay of execution of judgment)

RULING

1. What is before me is the notice of motion dated the 25/9/25 seeking leave to file an appeal out of time.
2. The application is based on the grounds annexed thereto and the supporting affidavit of Brian Ikol, the Director of Legal Affairs and Dispute Resolution of the applicant. He deposes that the Land Acquisition Tribunal (hereinafter called the LAT) delivered its judgment on 31/7/25, which the applicant is aggrieved with, hence the desire to lodge an appeal.
3. That the applicant risks being prejudiced by the award because the respondent had already received payment and accepted an award for compensation, but through the impugned judgement, a substantially larger sum was awarded, exceeding the previous payment and to the detriment of the taxpayer.
4. He further deposes that the delay in filing the appeal within the requisite time provided by the law, which is 30 days post judgment, was occasioned by the delay in obtaining instructions from its instructing client. The court was urged to grant the orders sought.
5. Opposing the application, Samwel Migwi Theuri, one of the directors of the respondent, deponed in his replying affidavit sworn on 14/10/25 that the manner in which the applicant moved the Court



under the banner of an “appeal” renders the whole application and the alleged appeal defective and flawed.

6. He contends that an application of this nature seeking leave to file an appeal out of time should have been made through a miscellaneous application. It is only after leave to file an appeal out of time has been granted that the applicant may proceed to file the appeal. Currently, there is no competent appeal before this court unless and until the orders permitting the filing of the appeal out of time are issued.
7. Secondly, the deponent stated that the applicant is misleading the court because it filed a notice of appeal on 20/8/25. Therefore, the claim that there was a delay in obtaining instructions to file the appeal is unfounded, as it is assumed that by the time the applicant filed the notice of appeal, it had already procured the instructions.
8. He further added that the explanation provided for the delay, which is the need to obtain explicit instructions, is not only vague and unsubstantiated but also contradicted by the applicant's conduct, including the filing of the notice of appeal. The reason offered by the applicant is therefore untenable and unexplained.
9. On prejudice, the respondent urged the court to find that it stands to suffer prejudice as its right to the enjoyment of the fruit of the judgment is curtailed.
10. Parties filed written submissions, which I have read and considered
11. The Application before Court for consideration has been anchored under Section 13 and 16A of the ELC Act, Section 79G of the CPA and Order 42 Rule 6 of the CPR. Section 79 G of the [Civil Procedure Act](#) reads as follows;

“79G. Time for filing appeals from subordinate courts

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 applicant of a copy of the decree or order:

Provided that an appeal may be admitted out of time if the applicant satisfies the court that he had good and sufficient cause for not filing the appeal in time”.

12. Section 16 A of the [Environment and Land Court Act](#) provides as follows;

“(1) All appeals from subordinate courts and local tribunals shall be filed within a period of thirty days from the date of the decree or order appealed against in matters in respect of disputes falling within the jurisdiction set out in section 13(2) of the [Environment and Land Court Act](#) (Cap. 8D), provided that in computing time within which the appeal is to be instituted, there shall be excluded such time that the subordinate court or tribunal may certify as having been requisite for the preparation and delivery to the appellant of a copy of the decree or order.

(2) An appeal may be admitted out of time if the appellant satisfies the court that he had a good and sufficient cause for not filing the appeal in time



13. Section 95 of the *Civil Procedure Act* reads as follows; -

“Where any period is fixed or granted by the Court for the doing of any acts prescribed or allowed by this Act, the Court may, in its discretion, from time to time, enlarge such period, even though the period originally fixed or granted may have expired”

14. It is clear from the above provisions of the *Civil Procedure Act*, Cap 21 that the extension of time for a party to do certain acts is a matter of discretion by the court. It is also true that the court may admit an appeal out of time provided that the applicant satisfied the court that he had a good and sufficient cause for not filing the appeal on time.

15. The threshold for extension of time was set out in the case of *Leo Sila Mutiso -vs- Rose Hellen Wangari Mwangi* – Nairobi Civil Application No. 251 of 1997, the Court stated:

“It is now settled that the decision whether to extend the time for appealing is essentially discretionary. It is also well stated that in general the matters which this court considers in deciding whether to grant an extension of time are, first the length of the delay, secondly the reasons 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.”

16. Further the Supreme Court in the Supreme Court in *County Executive of Kisumu vs. County Government of Kisumu & 8 Others* (2017) eKLR pronounced the general criteria for considering applications for extension of time in the following words: -

“it is trite law that in an application for extension of time, the whole period of delay should be declared and explained satisfactorily to the Court. Further, this Court has settled the principles that are to guide it in the exercise of its discretion to extend time in the *Nicholas Salat* case to which all the parties herein have relied upon. The Court delineated the following as:

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

17. The application has been challenged on the grounds that the applicant has not moved the court in accordance with procedural law. That is to say, the applicant should have first filed a miscellaneous



- application seeking leave, and, if leave is allowed, then filed the appeal. The applicant has acknowledged the error and urged the court to be guided by the provisions of Art 159 (2) d of *the Constitution* and allow the application.
18. I have considered the effect of striking out the “appeal” and find that the proposed action will, in my view, serve no purpose. Instead, I am supported by Art. 159 (2) (d) of *the Constitution*, which aims to deliver substantive justice by applying it in the current application, despite its procedural flaws. I am therefore reluctant to accept the invitation to strike it out, even though it is inelegantly drafted.
 19. It is trite that an appeal from the tribunals ought to be filed within 30 days. In this case, the judgment was delivered on 31/7/25, and the appeal ought to have been lodged by 30/7/25. It is not in dispute that the applicant filed a notice of appeal dated 19/8/25, which was within the 30-day period for filing the appeal.
 20. The provisions of Order 42 rule 1 of the Civil Procedure Rules states as follows;

“every appeal to the High Court [read ELC Court] shall be in form of a memorandum of appeal signed in the same manner as a pleading.
 21. My reading of the above provision is that a party desiring to file an appeal to this court does not need to file a notice of appeal, but rather a memorandum of appeal. It is only in appeals from the ELC Court to the Court of Appeal that a notice of appeal is appropriate as outlined under Order 42 Rule 6(4) of the Civil procedure Rules. In my view therefore nothing shall turn on this point.
 22. The applicant has explained the delay in filing the appeal to be the time it took counsel to obtain instructions thereof. The court is satisfied that this is a plausible explanation and one that can open the flow of discretion in favour of the applicant.
 23. It is to be observed that courts must balance the right to be heard of the applicant on appeal as well as the right of the respondent to enjoy the fruit of its judgement. In either way the court finds that the ends of justice will be met when the application is allowed to enable the parties be heard on the appeal.
 24. All in all, the application is merited. It is allowed as follows;
 - a. Leave be and is hereby granted to the applicant to file an appeal out of time.
 - b. The applicant is directed to file and serve the record of appeal within the next 45 [forty-five] days form the date of this Ruling.
 - c. In default, the orders granted herein shall lapse automatically.
 - d. Costs of the application are in favour of the respondent.
 25. It is so ordered

DELIVERED, DATED AND SIGNED AT NAIROBI THIS 9TH DAY OF DECEMBER 2025 VIA MICROSOFT TEAMS.

J. G. KEMEI

JUDGE

Delivered online in the presence of;

Ms Njeri Kariuki for the Applicant

Mr Mwangi for the Respondent



Ms Yvette - CA

