

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KILGORIS
ELC MISC (L) E017 OF 2025

CHEPO OLDENYATI.....
APPLICANT

VERSUS

ANDREW LATON LEKOKEI.....1ST
RESPONDENT

FRANCIS OLOISHAI KISAKA.....2ND
RESPONDENT

NOKIPA OSIKO KOKOTI SEMPELAI.....3RD
RESPONDENT

NTITI OLE KOKOTI.....4TH
RESPONDENT

RULING

1. The application dated 19th August 2025 subject of this Ruling seeks extension of time to file an Appeal, as well as stay of execution orders, from the judgment delivered on 20th December 2024 in Kilgoris MCELC/E003/2023.
2. In support of the application the Applicant has penned the following grounds; summarized as herefollows; -
 - (i) The Applicant is dissatisfied with the judgment delivered in Kilgoris MCELC E003 of 2023 and intends to appeal against the said judgment; the Applicant was not advised on the outcome of the suit and a Bill of costs was taxed and the Applicant only learnt of the decision upon service of the certificate of cots.
 - (ii) The delay in filing of the Appeal was occasioned by a mistake of the previous counsel, and her appeal raises pertinent issues of law and facts and has an overwhelming chance of success.

- (iii) The Application has been filed promptly without inordinate delay and interests of justice demand that the application be heard and allowed.
3. In support of the application is the supporting affidavit deponed by the Applicant who reiterates the grounds in support of the application in his deposition and has annexed a copy of the impugned Judgment, a letter dated 22.07.2025, a draft Memo of Appeal and deposition to the effect that she was willing to furnish any reasonable security and had reported the 1st Respondent to Kilgoris police station for obtaining money by false pretenses vide O.B No. 13/1/4/2025.
4. In opposition to the application a Replying affidavit deponed jointly by 2nd to 4th Respondents was filed.
5. It is the Respondent's deposition that
- (i) The application was filed by a stranger to the proceedings having been filed by Messrs T.O Nyangosi and Co. Advocates who were not on record in the trial court and were thus strangers.
 - (ii) That the Application was filed 7 months late and the reasons were unsatisfactory as the Applicant was aware of the outcome of the case, and she informed neighbours of the outcome.
 - (iii) That she was responsible to know the outcome of the case, and actually vacated the suit property in April 2025 after she was given alternative parcel by the 1st Respondent as a result of the judgment delivered in December, 2024.
6. The application was argued by way of oral submissions Mr. Nasongo Learned counsel for the applicant placed reliance entirely on the application and the supporting affidavit and argued the court to allow the application.
7. Ms. Wekesa Learned counsel for the Respondent opposed the application. She submitted while placing reliance on the Replying affidavit, that Judgment had been delivered virtually in the presence of both counsels.

8. She submitted that the firm of T.O Nyangosi which had filed the present application was not properly on record as no leave of the court had been obtained pursuant to Order 9 Rule 9 of the Civil Procedure Rules.
9. She submitted that there was no basis for extension of time, as extension of time was not a right of a party but was equitable remedy.
10. She submitted that the application was filed 7 months late, no sufficient reasons for the delay were given, that the Applicant had vacated the suit property and the 3rd and 4th Respondents are already in occupation of the same.
11. The application was thus an afterthought, Learned counsel submitted, and urged the court to dismiss the application. Mr. Nasongo, in a brief rejoinder placed reliance, on the supporting affidavit.

Issues for Determination?

12. Having analyzed the application, the affidavits in support and in opposition and the submissions, as well as considered the law, the court frames the following as issues for determination
 - (i) Whether or not the application is defective, having been filed a stranger?
 - (ii) Whether or not the application is merited?
 - (iii) What reliefs ought to issue?
 - (iv) Who bears the costs of the application?

Analysis and Determination

13. The Respondent submitted that the application as filed was filed by a stranger in contravention of Order 9 Rule 9 of the Civil Procedure Rules. That the firm of T. Nyangosi and Co. Advocates did not obtain leave to come on record after judgment.

14. The Applicant did not respond to this issue in its submissions and neither did she file a further affidavit to address the same.
15. This application was filed in Appellate proceedings and not the proceedings before the trial court. In Tobias M. Wafubwa Vs. Ben Butali 2017 (eKLR) the court observed *inter alia* that an Appeal is a new proceeding hence parties should therefore have a right to choose whether to retain the same counsel or not.
16. The court in the said decision further held as follows; -
“We are of the same view and would adopt the same approach in its entirety in matters concerning appeals, once a Judgment is entered save for matters such as application for review of execution is entered, inter alia, An appeal to an Appellate court is not a continuation of proceedings in the Lower court but a commencement of new proceedings in another court where different rules may be applicable for instance, the court of Appeal Rules 2010 or the Supreme Court Rules 2010, parties should therefore have the right to choose whether to remain with the same counsel or engage another counsel, on appeal without being required to file a Notice of Change of Advocates or to obtain leave from the concerned court to be placed on record in substitution of the previous advocates.”
17. The principles for enlargement of time were stated in the decision in the case of Leo Silla Mutiso vs. Rose Hellen Wangari Nairobi Civil Application 255/1997 where the court held *inter alia*; ***“it is now well settled that the decision whether or not to extend the time for appealing is essentially discretionary, it is also settled that in general the matters which the court takes into account in deciding whether to grant an extension of time are first the length of the delay, secondly the reason for the delay, the chances (possibly) of the appeal succeeding if the application***

is granted and fourthly, the degree of prejudice to the Respondent if the application is granted”

18. Applying the said principles to this application, the impugned Judgment was delivered on 20th December 2024, the application seeking an extension was filed 19th August 2025. The applicant had 30 days from the 20th December 2025 to file the Appeal. She filed the application seeking extension of time about 8 months late.
19. Whereas in ordinary circumstances 8 months delay is not very inordinate the circumstances herein suggest that the Applicant was well aware of the Judgment having reported the 1st respondent to the police station for obtaining money by false pretences
20. The 2nd principle is that the reason for the delay must be explained the reason for the delay raised by the Applicant was that there was lack of communication from the previous Advocates on the outcome of the judgment is not plausible the Applicant herself indicated that she reported the 1st Respondent in April 2025 for obtaining by false pretenses at paragraph 10 of the Replying affidavit, confirming that she was aware of the outcome of the case and her only challenge on the impugned judgment would be the issue of costs as per paragraph 9 of the supporting affidavit.
21. From the Replying affidavit paragraphs 12 to 15, further indicate that the Applicant vacated the suit property pursuant to the judgment, hence she was aware of the outcome of the case, was indolent and the application was filed as an afterthought.
22. The judgment having been executed by the Applicant vacating the suit property the court finds no prejudice will be occasioned to the Applicant, and since costs follow the event, the chances of the Appeal succeeding are equally slim.
23. In a nutshell, the Applicant has not satisfied any of the conditions set out in Leo Silla Mutiso decision and the court finds no merit in the

application and declines to stay the execution as well as extend leave to Appeal out of time.

24. The upshot is that the application is not merited and the same is dismissed with costs to Respondents.

Dated at Kilgoris this 15th day of December, 2025.

Hon. M.N Mwanyale
Judge

In the presence of

CA - Emmanuel/Sylvia/Sandra

Mr. Nasongo for Applicant

Ms. Wekesa for 2nd to 4th Respondents