



**Macai v Machaki (Environment and Land Appeal E020 of 2024)  
[2025] KEELC 18571 (KLR) (8 December 2025) (Ruling)**

Neutral citation: [2025] KEELC 18571 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT EMBU  
ENVIRONMENT AND LAND APPEAL E020 OF 2024**

**AK BOR, J  
DECEMBER 8, 2025**

**BETWEEN**

**MACAKI MACAI ..... APPELLANT**

**AND**

**MICHECK NJERU MACHAKI ..... RESPONDENT**

**RULING**

1. Through the application dated 15/5/2024 the Appellant seeks leave for the firm of Musyoka Munyao Advocates to come on record to represent him and leave to appeal out of time against the orders of Hon N. Kahara made on 21/2/2024 in Siakago SPMCC No E066 of 2019. Further, he seeks to have Memorandum of Appeal filed on 21/5/2024 deemed as properly filed. The other order sought are an injunction to restrain the Respondent or his agents from subdividing, distributing, transferring or in any other way dealing with the land known as Nthawa/Gitiburi/4592 and 4593 pending hearing and determination of the appeal and an order of inhibition restricting the land registrar Siakago from transacting with the two parcels of land until the appeal is determined.
2. The application was made on the grounds that on 21/2/2024, the Learned Magistrate dismissed the Appellant's application dated 6/9/2023 and the period for lodging an appeal had lapsed. Being aggrieved by the orders made by the Learned Magistrate, the Appellant wishes to appeal. He explained that he is elderly without legal knowledge and did not understand the court proceedings and the mediation process. He claimed that his former advocate Muriuki Muriithi, failed to properly present his case to the court. The other ground is that the Appellant claims to have sufficient proof to show that the mediation agreement in SIK/MED/5/2020 was a sham because of misrepresentation of facts and recording of false information. Further, that he had discovered that the applications made to court on 27/8/2021 and 5/1/2022 contained his forged signature. He urged that he did not make the application dated 27/8/2021. He had been representing himself and only realized these irregularities when he got counsel but did not have enough evidence when his former advocate was representing him. That he recently discovered new evidence which according to him brought out the



elements of mistake, misrepresentation and fraud in both the mediation and court proceedings. He added that the Respondent had illegally transferred Nthawa/Gitiburi/3707 and subdivided it into Nthawa/Gitiburi/4592 and 4593. He urged that he had an arguable appeal. The Appellant swore the supporting affidavit.

3. The Respondent swore the replying affidavit opposing that application. He averred that the application was an afterthought and devoid of merit. He urged that the appeal stood no chances of success because the Appellant had not challenged the mediation process and that he was alleging fraud and inclusion of aspects, which were not discussed in the mediation. He argued that the trial court was clear in its ruling that a consent arising out of mediation could not be the subject of an appeal. He added that the Appellant failed to explain the delay and that granting the orders sought would result in the abuse of the court process.
4. The court directed parties to file and exchange written submissions, which it has considered. The Appellant submitted that the time within which he could lodge an appeal against the orders made by the trial court had lapsed yet he was aggrieved by the court's decision. He attributed the delay in filing the appeal to collection of evidence, which could not be found by the previous advocate by the time the application dated 6/11/2023 was filed. He urged that he was aged and without legal knowledge.
5. The Appellant relied on Section 79G of the *Civil Procedure Act*, which stipulates that an appeal should be lodged within 30 days of the date of the decision. He cited Nicholas Kiptoo Korir Salat v IEBC and 7 other (2014) eKLR on the principles applicable in an application for leave to appeal out of time. The court stated that extension of time was an equitable remedy available to a deserving party at the discretion of the court. Factors such as whether there was a reasonable explanation for the delay and if the delay was explained to the satisfaction of the court; whether the Respondent would suffer the prejudice if the extension is granted; and whether there was delay in bringing the application.
6. The Appellant submitted that he had demonstrated that he was collecting evidence upon which he would base his appeal and that he had also shown that he was not properly represented in court by his previous advocates. He filed his memorandum of appeal on 21/5/2024 and urged that the delay was not inordinate. He urged the court to exercise its inherent powers under sections 1A, 1B, 3A of the *Civil Procedure Act*. He urged that he had met the threshold for the grant of the orders sought. He also submitted that he had a prima facie case and stood to suffer irreparable loss.
7. The Respondent submitted that in Paul Musili Wambua v Attorney General & 2 Others (2015) eKLR, the court stated that the decision whether to extend time for appeal must be based on reasons such as the length of the delay, the reason for the delay, the chances of the appeal succeeding if the application is granted and the degree of prejudice to the Respondent if the application is granted. He urged that the appeal did not stand a good chance of success because it is against a mediation settlement agreement and relied on Rule 36 (3) of the Civil Procedure (Court Annexed Mediation) Rules, which provides that no appeal shall lie against the decree or order of the court arising from a settlement agreement. The Respondent argued that the discovery of new evidence was not a proper reason for allowing an appeal out of time since any new evidence should be brought within an existing appeal.
8. The issue for determination is whether this court should grant leave to the Appellant to lodge an appeal out of time. The court notes that a consent was recorded on 8/10/2020. The applicant filed the application dated 6/9/2023 seeking the setting aside and review of the consent order dated 8/10/2020. The Learned Magistrate dismissed that application.
9. The Appellant averred that he was a senior citizen without legal knowledge and that he had come across new evidence, which he wished to introduce. At this stage, the court is not dealing with the merits of the intended appeal.



10. The Appellant has not met the threshold for the grant of an interim order for an injunction. The delay of 3 months is not inordinate and the reasons given are reasonable. The court grants prayers 2, 3 and 4 of the application. The costs of the application will abide the outcome of the appeal.

**DELIVERED VIRTUALLY AT EMBU THIS 8<sup>TH</sup> DAY OF DECEMBER 2025.**

**K. BOR**

**JUDGE**

In the presence of:

Mr. Mohamed Kofa -Court Assistant

No appearance for the parties

