



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ELC LAND MISC. NO. E058 OF 2024

IRENE MURANGA.....APPLICANT **SILANTOI**

VERSUS

VALERIE UWIMANA.....1ST RESPONDENT
THOMAS MAINGI WAMBUA.....2ND RESPONDENT
RUTH NZULA MAINGI.....3RD RESPONDENT
MBUKONI HOLDINGS LIMITED.....4TH RESPONDENT
CHRISPINE ISALANO LIHANDA.....5TH RESPONDENT

RULING

1. Before this court for determination is a notice of motion dated 11th December 2024, filed by the applicant, expressed to have been moved under **Article 159 (2) (a) and (d)** of the **Constitution of Kenya, 2010, Sections 1A, 1B, 3A, 79G** and **95** of the **Civil Procedure Act**, Chapter 21 of the Laws of Kenya, **Orders 22 Rule 22, 42 Rule 6** and **50 Rule 6** of the

Civil Procedure Rules, 2010, and all enabling provisions of the law. She prays for the following orders from this court: -

a) Spent.

b) Spent.

c) Spent.

d) Spent.

e) THAT this honourable court be pleased to enlarge the time within which the applicant ought to comply with Section 79G of the Civil Procedure Act by filing a memorandum of appeal against the judgment and decree passed by the Chief Magistrate's Court at Kangundo (Hon. K. D. Ole Keiwua) on 30th September 2024 in Kangundo MCELC No. 167 of 2019 Valerie Uwimana -vs-Thomas Maingi Wambua & 4 Others.

f) THAT the costs of this motion be in the cause.

2. The motion is supported by several grounds presented on its face and by the supporting affidavit of the applicant, sworn on the instant date. Concisely, she states that the judgment delivered on 30th September, 2024, favoured the 1st

respondent, and she subsequently sought to appeal against it through M/s Gacau Kariuki & Co. Advocates, the applicant's former law firm, who mistakenly filed a miscellaneous application in **Machakos ELC Miscellaneous Application No. E044 of 2024 Valerie Uwimana -vs- Thomas Maingi & 4 Others ("other miscellaneous case")** ostensibly seeking leave of the court to appeal against the impugned judgment instead of the intended appeal, resulting in the lapse of the 30-day timeframe for filing under **Section 79G** of the **Civil Procedure Act**.

3. Consequently, no appeal was filed, denying the applicant the chance to contest the trial court's decision. The applicant's delay in filing was attributed to the negligence of her former advocates and was not intentional. She is now ready to comply with court timelines if allowed to proceed with her appeal, which she believes has good grounds and a high chance of success, and the motion has been made promptly. Amongst several documents, she presented to this court a draft memorandum of appeal and the application in the other miscellaneous case.
4. The motion is strenuously challenged by the 1st respondent's replying affidavit, which she swore on 20th January 2025. Succinctly, she contends that the application lacks merit and should be dismissed with costs, as the applicant has not shown sufficient cause for the court to exercise discretion in her favour. She has not demonstrated any efforts to follow up on

her case until the imminent execution of the judgment woke her up from her slumber.

5. Hence, this should not prejudice the successful litigant, who is entitled to the benefits of the judgment. Moreover, the Applicant may pursue any claims for damages due to her advocate's alleged negligence if she believes she has suffered any. Significantly, the 1st respondent also deponed on the spent issue of stay of execution pending appeal.
6. Subsequently, and as directed by the court, the motion was considered through written submissions. The law firms of **Mss G. M. Muchoki & Co. Advocates** submitted their filings dated 21st May 2025, and **Bryan Khaemba, Kamau Kamau & Co. Advocates**, on behalf of the 1st respondent, submitted theirs dated 30th June 2025. Accordingly, the court has thoroughly examined the motion, its grounds, affidavits, and the arguments as contained in the submissions, which are supported by relevant laws and case precedents, and it suffices that the sole issue for determination is **whether an extension of time should be granted to the applicant.**
7. In addressing the distilled issue, it is imperative for this court to emphasise the pertinent legal provisions concerning the extension of time to lodge an appeal. Concerning this matter, as indicated on the face of the motion, **Section 79G** of the **Civil Procedure Act** stipulates that any party involved in proceedings before the lower court who is dissatisfied with its

decision may, within 30 days of the decision, lodge an appeal to the superior court authorised to hear such appeals.

8. Nonetheless, in cases involving delays, parties may, as the applicant has done, make an application to the court under **Section 95** of the **Civil Procedure Act**, requesting the court to exercise its sound discretion based on valid and sufficient grounds. The court may, at its discretion, subsequently extend the prescribed period, even if the initial period has expired. **Section 79G** of the **Civil Procedure Act** states;

“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 appellant of a copy of the decree or order:

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

While **Section 95** of the **Civil Procedure Act** provides as follows: -

“Where any period is fixed or granted by the court for the doing of any act 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.”

9. In considering such applications, the fundamental non-exhaustive principles governing the exercise of judicial discretion for the extension of time were established by the **Supreme Court of Kenya in Salat v Independent Electoral and Boundaries Commission & 7 others [2014] KESC 12 (KLR)**, which decision has been relied upon by both parties. As articulated in **paragraph 85** of its decision, the apex court delineated the following criteria: -

“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;

A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the court;

Whether the court should exercise the discretion to extend time, is a consideration to be made on a case to case basis;

Whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the Court;

Whether there will be any prejudice suffered by the respondents if the extension is granted;

Whether the application has been brought without undue delay; and

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

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10. Additionally, this court must consider its primary objective of ensuring a fair, expeditious, proportionate, and accessible dispute resolution, as delineated in **Section 3** of the **Environment and Land Court Act**. The question arises whether the applicant has furnished sufficient grounds to justify an extension of the time for filing an appeal. In this instance, the contested decision was issued on 30th September 2024, and the present application was filed on 11th December 2024, a span of nearly three months, which, given the circumstances, is not excessive.

11. It follows that the burden rests upon the applicant to sufficiently explain these months of delay to the court, as an extension of time constitutes an equitable remedy. Therefore, upon reviewing the record, the applicant stated that although she instructed her then-counsel to file an appeal against the trial court's decision, counsel erroneously filed another miscellaneous case. Upon discovering this, she subsequently filed the present case.

12. The 1st respondent has not disputed the circumstances or the existence of the other case; however, she asserts that she should be entitled to enjoy the fruits of her judgment and that the 1st respondent's recourse is to pursue the erstwhile counsel. While these grounds are valid, this court has carefully considered the circumstances of this case and does not doubt that the applicant intended to file an appeal within the requisite timeframe, as evidenced by the CTS system, which indicates that the other miscellaneous case, seeking similar reliefs as this application, was filed on 12th October 2024- approximately twelve days from the date the impugned judgment was delivered.

13. This application was never duly considered on its merits for apparent reasons. In this court's opinion, upon such discovery, the applicant promptly took appropriate steps to lodge this motion. Had she delayed, this court would not have hesitated to disallow the motion. Furthermore, having scrutinised the draft memorandum of appeal, this court is satisfied that the grounds are substantial.

14. Therefore, in the circumstances of this case, this court finds that the applicant has satisfactorily explained why the appeal was not filed within the prescribed time frame. It also finds that the motion is merited. It allows the notice of motion dated 11th December 2024, with costs, to abide by the outcome of the substantive appeal. In the end, the court grants the motion on the following terms: -

a) Leave to file an appeal out of time is hereby granted, and the appeal shall be filed and served within 14 days from the date of this ruling.

b) Failure to comply with the order (a) above shall lead to the automatic vacation of the order.

c) Costs of the motion shall abide by the outcome of the appeal.

d) The file is hereby marked as closed.

It is so ordered.

Delivered and Dated at Machakos this 20th day of January, 2026.

**HON. A. Y. KOROSS
JUDGE
20.01.2026**

Ruling delivered virtually through Microsoft Teams Video Conferencing Platform

In the presence of;

Ms Kanja Court Assistant

Mr. Bulowa for 1st Respondent

Miss. Muraguri holding brief for Mr. Mbugua for Applicant

ORIGINAL