



REPUBLIC OF KENYA



**KENYA LAW**  
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**Paul Sila Properties Limited & another v Nzomo; Musyoka & 14 others  
(Interested Parties) (Environment and Land Miscellaneous Application  
E010 of 2025) [2025] KEELC 5687 (KLR) (30 July 2025) (Ruling)**

Neutral citation: [2025] KEELC 5687 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS  
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E010 OF 2025  
NA MATHEKA, J  
JULY 30, 2025**

**BETWEEN**

**PAUL SILA PROPERTIES LIMITED ..... 1<sup>ST</sup> APPELLANT**

**PAUL KANGA SILA ..... 2<sup>ND</sup> APPELLANT**

**AND**

**MARTIN MUTUKU NZOMO ..... RESPONDENT**

**AND**

**DANIEL KYALO MUSYOKA ..... INTERESTED PARTY**

**NEHEMIAH K MUTAI & BEATRICE C CHEPKWONY ... INTERESTED PARTY**

**TERESIA MIRERA ..... INTERESTED PARTY**

**DAVID MUTHAMI KILONZO ..... INTERESTED PARTY**

**HANNAH WAITHERA WAKIAMBA ..... INTERESTED PARTY**

**KIMATHI JOHNSON MUTHONI ..... INTERESTED PARTY**

**SARAH BONARERI OMACHE ..... INTERESTED PARTY**

**JACQUILINE JERI NGILU ..... INTERESTED PARTY**

**JACKLINE NEKESA MAKHOKHA ..... INTERESTED PARTY**

**SELINA KOMU ..... INTERESTED PARTY**

**FREDRIKA KEMUNTO NYANG'AU ..... INTERESTED PARTY**

**CHARITY NDANU NDETI ..... INTERESTED PARTY**

**MUSA SALIM OMAR ..... INTERESTED PARTY**



**REGINA MUTIRU, JESCAH AWITI OTIENO & STELLA  
NASIMIYU ..... INTERESTED PARTY  
REGISTRAR-MACHAKOS LAND REGISTRAR ..... INTERESTED PARTY**

### **RULING**

1. The application is dated 12<sup>th</sup> February 2025 and is brought under Section 3A, 79G and 95 of the Civil Procedure Rules 2010, Order 42 and 51 of the Civil Procedure Act seeking the following orders;
  1. That this Application be certified as urgent and service of the same be dispensed with in the first instance.
  2. That the firm of D.K. Muema & Company Advocates be granted leave to come on record for the Appellants/Applicants after delivery of Judgment.
  3. That pending the hearing and determination of this Application this Honourable Court be pleased to issue an order staying the Judgment delivered on the 7<sup>th</sup> December, 2024 by the learned Magistrate, Decree issued thereafter and any other consequential orders.
  4. That this Honourable Court be pleased to extend the time within which the Applicant may lodge a Memorandum of Appeal.
  5. That the Memorandum of Appeal annexed herein be deemed as duly filed upon payment of the requisite fees.
  6. That costs of this Application be provided for.
2. It is supported by the affidavit of Paul Kanga Sila and grounds that Judgment in Mavoko Law Courts, Civil Case Number E063 of 2023 was delivered by Hon. Barbara Ojoo on the 7<sup>th</sup> December, 2024 wherein the learned Magistrate held that the Defendant to pay to Plaintiff the sum of Kshs. 2,500,000 being the balance of the purchase price relating to Athi River/Athi River Block 1/1163 with interests at Central Bank rates plus costs and interests. That after delivery of the said Judgment the previous counsel for the Appellants/Applicants never communicated to them that Judgment was delivered. That the Appellant/Applicants only became aware of the Judgment on the 10<sup>th</sup> February, 2025 when he visited the offices of his former advocate to find out the progress of this matter. That the Appellants/Applicants being aggrieved by the Judgment of the lower court delivered on are desirous of appeal against the whole of the said Judgment. That Appellants/Applicants have proceeded to prepare a Memorandum of Appeal stating their grounds of the appeal. That the intended appeal is arguable and has *prima facie* chances of success. That the time for filing the intended appeal has lapsed and leave of court is required to enable the Appellant/Applicant file the appeal out of time. That the failure by the Appellants/Applicants to file the intended appeal on time was not deliberate but was occasioned by breakdown in communication between the Appellants/Applicants and their former advocates. That vide a letter dated 29<sup>th</sup> January, 2025 advocates for the Respondent have written to the court requesting to be supplied with a Decree commencing the process of executing the Judgment delivered on the 7<sup>th</sup> December 2024. That unless the orders sought are granted the Respondent will proceed and execute against the Appellants/Applicants and the intended appeal will be rendered nugatory. That no prejudice will be occasioned to the Respondent should this Application be allowed. That the Application is made in good faith and in the interest of justice.



3. The 1<sup>st</sup> Defendant herein raised a Preliminary Objection to the Application dated 26<sup>th</sup> July, 2024 on the grounds that the Applicants' Application dated 12<sup>th</sup> February, 2025 is defective, bad in law and utterly incompetent. That the Applicants' contention for extension of time to lodge a Memorandum of Appeal is unjustifiable and only seeks to delay the Respondent from enjoying the fruits of his Judgment despite the fact that the Appellants continue to enjoy possession of the suit property. That the Application dated 12<sup>th</sup> February, 2025 is misconceived, frivolous and an abuse of court process and should be struck out in totality at the first instance.
4. This court has considered the Preliminary Objection, application and submissions therein. According to the Black Law Dictionary a Preliminary Objection is defined as being;
 

"In case before the tribunal, an objection that if upheld, would render further proceeding before the tribunal impossible or unnecessary....."
5. The above legal proposition has been made in the case of Mukisa Biscuits Manufacturing Co. Ltd vs West End Distributors Ltd. (1969) E.A. 696 where the court held that;
 

"The first matter relates to the increasing practice of raising points, which should be argued in the normal manner, quite improperly by way of preliminary objection. A preliminary objection is in the nature of what used to be a demurer it raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought in the exercise of judicial discretion. The improper raising of points by way of preliminary objection does nothing but unnecessarily increase costs and, on occasion, confuse the issue. The improper practice should stop"
6. In the case of Attorney General & Another vs Andrew Mwaura Githinji & another (2016) eKLR the court outlined the scope and nature of preliminarily objection as;
  - (i) A preliminary objection raised a pure point of law which is argued on the assumptions that all facts pleaded by other side are correct.
  - (ii) A preliminary objection cannot be raised if any fact held to be ascertained or if what is sought is the exercise of judicial discretion; and
  - (iii) The improper raise of points by way of preliminary objection does nothing but unnecessary increase of costs and on occasion confuse issues in dispute.
7. It is trite law that a preliminary objection can be brought at any time at least before the final conclusion of the case. Ideally, all facts remaining constant, it should be filed at the earliest opportunity of the subsistence of a case, in order to pave way for the smooth management and determination of the main dispute in a matter. The 1<sup>st</sup> Defendant raised a Preliminary Objection to the Application dated 26<sup>th</sup> July, 2024 on the grounds that the Applicants' Application dated 12<sup>th</sup> February, 2025 is defective, bad in law and utterly incompetent and meant to deny him the fruits of his judgement. I do not see any point of law and the same is vague and general. I find that the filed preliminary objection by the 1<sup>st</sup> Defendant herein has no merit and an abuse of the court process and is dismissed.
8. Section 79G of the *Civil Procedure Act* is the operative part in answering the question whether the prayer to enlarge time to file the appeal is merited. Section 79G of the *Civil Procedure Act* provides that:
 

"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.”

9. From the provision above, it is noteworthy that the phrase used is “an appeal may be admitted out of time”. This therefore means that an appeal may indeed be admitted out of time. However, the intended appeal ought to have already been filed before or together with an application seeking leave to extend time for filing an appeal. In *Mugo & Others vs Wanjiru & Another* (1970) EA 482 the court stated as follows;

“Clearly, as a general rule the filing and service of the notice of appeal ought to be regularised before or at least at the same time as an application is made to extend the time for filing the record and the fact that this has not been done might be a reason for refusing the application or only allowing one on terms as to costs. But it does not mean that such an application must be refused.”

10. The Court of Appeal in the above case guided that whenever an application for extension of time is before a court, the court ought to take into account several factors as observed by Odek JJA in *Edith Gichungu Koine vs Stephen Njagi Thoithi* (2014) eKLR thus;

“Nevertheless, it ought to be guided by consideration of factors stated in many previous decision of this court including, but no limited to, the period of delay, the reasons for the delay, the degree of prejudice to Respondent if the application is granted, and whether the matter raises issues of public importance, amongst others.”

11. The Court of Appeal further guided that there is also a duty imposed on courts to ensure that the factors considered are consonant with the overriding objective of civil proceedings litigation, that is to say, the just, expeditious, proportionate and affordable resolution of disputes before the court. In *Nicholas Kiptoo Arap Korir Salat vs Independent Electoral and Boundaries Commission & 7 others* (2013) eKLR the court held 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.
- (5) Whether there will be any prejudice suffered by the respondent of the extension is granted.
- (6) Whether the application has been brought without undue delay; and
- (7) Whether uncertain cases, like election petition, public interests should be a consideration for extending time.”

12. I have given due consideration of the record in light of the pleadings, submissions, and principles that guide the court. The reason given for the delay in filing the appeal is that on 7<sup>th</sup> December, 2024 wherein the learned Magistrate held that the Defendant to pay to Plaintiff the sum of Kshs. 2,500,000 being the balance of the purchase price relating to Athi River/Athi River Block 1/1163 with interests at Central Bank rates plus costs and interests. That after delivery of the said Judgment the previous counsel for the Appellants/Applicants never communicated to them that Judgment was delivered.



That the Appellant/Applicants only became aware of the Judgment on the 10<sup>th</sup> February, 2025 when he visited the offices of his former advocate to find out the progress of this matter. The Applicant has annexed the draft Memorandum of Appeal. I find that this application was filed on 14<sup>th</sup> February 2025. I find that the applicant does have an arguable appeal. I also find that the applicant is not guilty of inordinate delay in the circumstances. I find this application is merited and I grant prayer 2,4 &5 on condition that the appeal is filed and served within the next 30 days. Costs of the preliminary objection and the application to be in the cause.

It is so ordered.

**DELIVERED, DATED AND SIGNED AT MACHAKOS THIS 30<sup>TH</sup> DAY OF JULY 2025.**

**N.A. MATHEKA**

**JUDGE**

