

**IN THE COURT OF
APPEAL AT
NAKURU**

**(CORAM: ALI-ARONI, MATIVO, & GACHOKA,
JJ.A.) CIVIL APPLICATION NO. E087 OF
2025**

BETWEEN

**RESOLUTERISE COMMUNITY
BASED ORGANIZATION.....APPLICANT**

AND

**LIVINGSTONE KUNINI NTUTU.....1ST
RESPONDENT COUNTY COUNCIL OF NAROK 2ND
RESPONDENT
THE ATTORNEY GENERAL.....3RD
RESPONDENT**

*(A reference from the ruling and order of this Court (M.
Warsame, JA.) dated and delivered on 21st October 2025)*

RULING OF THE COURT

1. This is a reference to the full bench arising from the ruling of the single judge (*M. Warsame, JA.*) dated 21st October 2025.
2. To put the reference in context, it is important that we set out the background to the dispute, which from the record before us has been ongoing in various courts for more than 25 years. The dispute went all the way to the Supreme Court and in a judgment dated 11th December 2018, the Apex Court referred the suit back to the Environment and Land

Court (ELC) for a fresh hearing. It is common ground that the dispute relates to a parcel of land measuring approximately 4000 acres in the

internationally renowned Masai Mara ecosystem. The hotly contested question is: who, between the 1st and the 2nd Respondent, owns the land?

3. In a judgment delivered on 6th March 2025, the ELC (*C. Mbogo, J.*) ruled in favor of the 1st respondent. The applicant was not a party in the proceedings in the ELC. However, invoking Rule 77 of the Court of Appeal Rules, the Applicant filed a notice of appeal dated 19th March 2025 as an affected party.
4. On 20th March 2025, the applicant filed **Civil Application No. NAI E177 of 2025**, seeking stay of execution of the judgment dated 6th March 2025. The 2nd respondent also filed **Civil Application No. NAK E037 of 2025**, seeking similar orders. We note from the day's cause list that the two applications were listed for hearing before this Court, differently constituted (*Warsame, Kiage & Mativo, JJ.A*). The orders that were issued on that day, which we shall revisit later, were the subject of heated arguments before the single Judge and before us.
5. From the record, **Civil Application NAK No. E037 of 2025** was heard first and the Court issued the following orders:

a) That Civil Appeal No. E052 of 2025 be heard on a priority basis;

- b) That the 1st respondent shall not charge, sell, or dispose of the suit property pending determination of the appeal;***
- c) That the 1st respondent, having taken possession, may continue collecting fees and levies, but must render accurate accounts to the County Government if the appeal succeeds;***
- d) That no party shall interfere with the 1st respondent's possession;***
- e) That the appeal and submissions be filed and served within 15 days, with the substantive appeal set for hearing on 28th October 2025.***

6. **Civil application No. NAI E177 of 2025** was called next.

The Court directed that the orders in **Civil Application No. NAK E037 of 2025**, would equally apply to that application.

The interpretation of this order is the bone of contention, both before the single Judge and this bench. We shall revisit the arguments later in this ruling.

7. What is not in dispute is that after the orders of 16th July 2024 were made, the applicant filed a Notice of Motion dated 13th August 2025, invoking Article 50 of the Constitution, sections 3A and 3B of the Appellate Jurisdiction Act, and rule 4 of this Court's Rules 2022, seeking an order for extension of time to file and serve the record of appeal out of time.

8. The application was placed before a single Judge and in his ruling, the single judge (Warsame, JA.) held as follows:

“16. I have carefully examined the orders issued on 16th July 2025 in both Civil Application No. NAK E037 of 2025 and Civil Application No. NAI E177 of 2025, as well as the verbatim transcript of proceedings on that date. In Civil Application No. NAK E037 of 2025, the Court issued specific orders in relation to the County Government of Narok's stay application. The operative orders were:

- a) That Civil Appeal No. E052 of 2025 shall be heard on priority basis;***
- b) That the 1st respondent shall not charge, sell or dispose of the suit property;***
- c) That the 1st respondent may continue collecting fees and levies but must account;***
- d) That no party shall interfere with the 1st respondent's possession;***
- e) That the applicant shall serve the appeal upon the respondents within 15 days.***

17. In interpreting the orders above, the starting point must be to ascertain their manifest purpose and intent. In Gakibe v Ngumba & 4 others, Civil Appeal (Application) E300 of 2021 [2023] KECA 1420 (KLR), the Court held that in interpreting a judgment or an order, the court's intention is to be ascertained primarily from the language of the judgment or order in accordance with the usual well-known rules relating to the interpretation of documents. The judgment or order and the court's reasons for giving it must be read as a whole in order to ascertain its intention. The manifest purpose of the judgment is to be determined by also having regard to the relevant background facts which culminated

in it being made. Applying these principles to the instant case, both the plain wording of the orders of 16th July 2025 and the

background circumstances unequivocally demonstrate that the Court was dealing with competing stay applications arising from the same ELC judgment and fashioning conservatory measures to preserve the status quo, not admitting new parties to appellate proceedings or authorizing separate appeals.

18. Critically, these orders were made in the context of the County Government's appeal (Civil Appeal No. E052 of 2025), not in relation to any appeal by the applicant herein. Indeed, the transcript reveals that the direction to file and serve the appeal within 15 days arose from Senior Counsel Kilukumi's complaint on behalf of the 1st respondent that they had not been served with the substantive appeal. The Court then directed that the County Government (the appellant) shall serve the appeal upon the respondents within 15 days. Clearly, the order arose from a specific procedural complaint about service between the actual parties to Civil Appeal No. E052 of 2025, not from any admission of the applicant as a party to those proceedings. The direction was clearly addressed to the County Government to remedy a service defect, not to Resoluterise Community Based Organisation."

9. The applicant, dissatisfied with the ruling of the single Judge, invoked rule 57 of the Rules of this Court, seeking a reference, which is now before us. At the hearing, the applicant was represented by M/s Wambugu, Advocate, while Mr. Kioko Kilukumi SC appeared for the 1st respondent and Mr. Paul Muite SC appeared for the 2nd respondent. The

3rd respondent did not appear, though duly served with a hearing notice. The

parties relied on their written submissions, which were orally highlighted. We shall refer to the submissions later in the ruling, but what is clear is that the main bone of contention before the single judge was the true meaning of the orders dated 16th July 2025 in **Civil Application No. NAK E037 OF 2025** and **Civil Application No. NAI E177 of 2025**. The 1st respondent graciously provided a copy of the proceedings of that day and we shall refer to the proceedings, where necessary.

10. In support of the reference, the applicant relied on the submissions dated 3rd September 2025. The applicant stated that it filed a Notice of Appeal as an affected party under rule 77 of the Rules of this Court. It contended that on 16th July 2025, it was joined as a party and the court directed that it should file and serve the record of appeal within 15 days. The applicant argued that it was unable to file the appeal within the 15 days. The applicant's main reason for the delay in filing the appeal was that the documents were voluminous and that it had to read the files in **Narok ELC No. 1565 OF 2000, Civil appeal No. 109 of 2014** and **Petition No. 3 of 2025** in the Supreme Court.

11. The applicant contended that the subject matter is of great public interest and the appeal has a high probability of success and that the delay in filing the application was not inordinate. The applicant argued that the single Judge's ruling was with fault as the orders of 16th July 2025 directed it to serve the appeal within 15 days. It was therefore wrong for the Judge to consider this issue of joinder as a jurisdictional issue and subsequently dismiss the application for extension of time on that ground. The applicant further argued that it filed a Notice of Appeal as an affected party and it was therefore a party. It stated that the delay in filing the appeal was well explained. The applicant argued that the reasons given by the single Judge did not justify the refusal to extend time to file the appeal. To the applicant, this was a wrong exercise of discretion and therefore, we should interfere with the single Judge's discretion and allow it to file and serve the record of appeal out of time.

12. In opposing the reference, the 1st respondent relied on a supplementary affidavit sworn on 5th September 2025, by Livingston Kununi Ntutu, as well as written submissions, a case digest and a list of authorities all dated 8th December

2025. The

gist of their submissions was that the applicant was not

enjoined (*sic*) as a party in **Civil Application No. E052 of 2025** and that it was misleading for the applicant to move the single judge to extend time on the ground that: ***“...the applicant herein was admitted as an appellant on 16th July 2024 and directed inter alia that the record of appeal be filed within 15 days from the date of the said order”***. To the 1st respondent, that amounted to perjury as the transcript of the court proceedings confirmed beyond reasonable doubt that the applicant was never admitted as a party.

- 13.** Citing the case of **Samaki Industries (Nairobi) Ltd vs. Samaki Industries (K) Limited** [1997] KECA330 (KLR) and **Kimathi & Anor vs. Muriuki & 12 others** [2023] 666 (KLR), the 1st respondent argued that the applicant had failed to meet the threshold for impeaching the decision of the single Judge. The 1st respondent further argued that the applicant filed a Notice of Appeal on 20th March 2025 and that the 60-day appeal window expired on 19th May 2025. Therefore, under rule 85 (1) of the Rules of this Court, the Notice of Appeal is deemed to have been withdrawn. It pointed out the

proceedings of the ELC were certified as a true copy of the original by the Deputy Registrar on 11th December 2024 and therefore, there is no reason why

the applicant did not file the record of appeal within time. On those grounds, the 1st respondent argued that no basis had been established to interfere with the discretion of the single Judge.

14. On its part, the 2nd respondent relied on the replying affidavit sworn on 9th September 2025 by John Mahiani Tuya, the County Secretary, written submissions and bundle of authorities both dated 5th December 2025. The gist of its submissions was that: the applicant was never authorized to file its appeal by the orders dated 16th July 2025; that the orders of 16th July 2025 merely applied conservatory orders to the applicant's application for stay and did not confer standing or party status; that the question of joinder could not be determined by a single Judge; and that the application was misconceived and an abuse of the court process.
15. Rehashing the proceedings of 16th July 2025, the 2nd respondent stated that the applicant was never authorized to file its appeal and that in the premises, the single Judge was right to dismiss the application for extension of time as he took into account all the facts and evidence that were

placed before

him. Finally, the 2nd respondent urged this Court to consider

the fact that although rule 77 of the Rules of this Court has no time limitation, when an affected party should seek to join a proceeding in Court, this dispute has been pending and moving from one court to another for over 30 years and the applicant never applied to join as a party. On questioning by the Court why it was opposed to joinder of a party that was supporting its appeal, the 2nd respondent indicated that the applicant's members were claiming ownership of the suit land, a fact that was vehemently disputed.

16. We have carefully considered all that has been urged before us.

The Court has stated time without number that in exercising the unfettered discretion under **Rule 4** of the Rules of this Court, a single Judge is doing so on behalf of the Court. A reference is not an appeal, so to speak, and the fact that a full Court sitting on that issue may have made a different decision is not a relevant factor. The full bench of this Court can only interfere with the exercise of that discretion only if it is shown that in exercise of his discretion, the single Judge took into account an irrelevant matter which ought not have been taken into account, or failed to take into account a

relevant matter

that should have been taken into account or misapprehended

some part of the evidence and the law applicable or that the decision is plainly wrong and that no reasonable tribunal properly directing itself to the evidence and the law could make such a decision. See **Patel vs. Waweru & 2 others** [2003] KECA 204 (KLR), and **Muchugi Kiragu vs. James Muchugi Kiragu & Another** [1998] KECA 81 (KLR).

17. The primary objective of rule 4 is to ensure that the door of justice is not closed to a deserving party. However, the Court should not hesitate to firmly shut the door to an undeserving party after considering all relevant facts and the law. This means that each application will be determined on its own merits as not all cases are the same in all respects.
18. We have carefully considered the submissions by the parties before the single Judge. The main issue that was argued was the meaning and purport of the orders made on 16th July 2025. This is the ground upon which the application for extension of time was dismissed. It is not denied that in **Civil Application No. NAI E177 of 2025**, the applicant had not applied for joinder and indeed it was wrong for the applicant to advance such an argument. We also note that the respondents spent

considerable length in advancing the argument that the orders of 16th July 2025 did not give the applicant party status.

- 19.** With respect, this is where the parties took the Court on the wrong path. It is a fact that order No. 5 in both applications that was extracted and served on the parties stated as follows: ***“That the applicant shall serve the appeal upon the respondents within 15 days from today and shall also file and serve their submissions upon the respondents within the same period of 15 days. UPON BEING served with the said documents the respondents shall file and serve their submissions within 15 days from the date of service.”***
20. The meaning and interpretation of that order is hotly contested.
- The applicant, which has filed a Notice of Appeal as an affected party, interpreted it to mean that it was granted 15 days to file the appeal but failed to do so for the reasons that it had to study voluminous documents in the many cases that have been in court in respect of this matter.
21. On the other hand, the respondents emphatically argued

that the question of joinder was not before the Court and therefore, the only logical interpretation is that the only aspects of the

ruling in **Civil Application No. NAK E037 of 2025** that could apply to **Civil Application No. NAI E177 of 2025** was the order for stay of execution. It is apparent that there is ambiguity in the orders that were issued on that day and specifically order No. 5 on service of the record of appeal. However, we will not swallow the bait that the parties are throwing at us to interpret that order. Clearly, the order is open to different interpretations, but this is not the reason we find that the reference has merit.

22. What is clear to us is that the only issue that fell for determination before the single Judge was whether there were good reasons for the delay in filing the record of time. Indeed, the 1st respondent has captured the issue aptly in his submissions: why the applicant failed to file the record on time, taking into account that the ELC proceedings were certified as a true copy of the original by the Deputy Registrar on 11th December 2024. This was the relevant issue for consideration, but the parties failed to take it up, and if they did (which is not apparent from the record), it was not considered by the single Judge.
23. After carefully considering the documents and the submissions

of the parties, we are constrained to conclude that had the

single Judge considered this issue, he would have probably reached the same or a different conclusion. This means that all the reasons that were raised by the applicant in support of the prayer for extension of time were not considered.

24. We have also considered the issue of prejudice that the respondents will suffer. The main argument, as we understand it, is that the applicant did not apply to be joined as a party to the proceedings that were ongoing. This may be so. However, rule 77 of the Rules of this Court does not impose such a condition. The 2nd respondent also argues that it is opposed to the extension of time as this may cause a delay, as its appeal, that is **CIVIL APPEAL NO. E052 of 2024**, has a hearing date slated for 27th January 2026. Thus, the application, if allowed, will cause a delay in the hearing and determination of that appeal. The 2nd respondent also argued that the applicant's members claimed that they are residing on the suit land, which is not the case.

25. We have considered those arguments. Firstly, the fear of the delay in hearing of the appeal will be taken care of by the directions that we shall give. As for the second issue as to who

resides on the land, the applicant, as an affected party, can only

support or oppose the appeal and cannot make new prayers in the appeal.

26. In the result, we allow the reference, set aside the orders of the single Judge dated 21st October 2025 and substitute therefore an order allowing the Notice of Motion dated 13th July 2025. We note the submissions that the main appeal, **CIVIL APPEAL NO. E052 OF 2025** was certified urgent and is set for hearing on 27th January 2026. This means that the parties have to operate within very tight timelines which we shall set.
27. Accordingly, we direct that the applicant shall file and serve the record of appeal, together with the submissions and bundle of authorities, by **21st January 2026**. Upon service, the respondents shall file and serve their written submissions and bundle of authorities by **23rd January 2026**. The appeal, once filed, shall be fixed for hearing on **27th January 2026** and the bench hearing the appeals will give directions on how the appeals will be heard.
28. In the meantime, the Hon. Deputy Registrar of this Court shall be served with this ruling so that she can make the necessary arrangements for the hearing of the two

appeals. Finally, the

costs of the application and the reference shall abide by the outcome of the appeals. It is so ordered.

Dated and delivered at Nakuru this 16th day of January 2026.

ALI-ARONI

.....
JUDGE OF APPEAL

J. MATIVO

.....
JUDGE OF APPEAL

M. GACHOKA, C.Arb, FCIArb

.....
JUDGE OF APPEAL

*I certify that this is a
True copy of the original
Signed*

DEPUTY REGISTRAR