

**IN THE COURT OF  
APPEAL AT  
NYERI**

**(CORAM: ALI-ARONI, J.A. (IN CHAMBERS))**

**CIVIL APPLICATION NO. E179 OF 2025**

**BETWEEN**

**ABDULLAHI NEWA DOKHOLE ..... 1<sup>ST</sup>  
APPLICANT**

**PAUL HIRBO ISATU.....2<sup>ND</sup> APPLICANT**

**AND**

**ZAINABU RAMATU USINFECHA.....1<sup>ST</sup> RESPONDENT**

**HALATI ZAKARIA.....2<sup>ND</sup> RESPONDENT**

**STEPHEN ZAKARIA.....3<sup>RD</sup> RESPONDENT**

**GUMATO WARIO ..... 4<sup>TH</sup>**

**RESPONDENT IBRAHIM BUNGE.....5<sup>TH</sup>**

**RESPONDENT**

**MPIRAON RAPHAELA NEEPE ..... 6<sup>TH</sup>  
RESPONDENT**

*(Being an application for leave to file and serve the record of appeal out of time against the Ruling and Order of the Environment and Land Court at Isiolo (J.O. Mboya, J.) delivered on 30th June 2025*

***in***

***ELCA No. E001 of 2023)***

**\*\*\*\*\***

**RULING**

1. Before the Court is an application by way of a notice of

motion dated 24<sup>th</sup> November 2025, brought under **rules 4, 41 and 75** of the Court of Appeal Rules 2022, ('the Rules'), **section 3A** of the Appellate Jurisdiction Act, and **Articles 50 and 159** of the

Constitution, seeking leave to file the record of appeal out of time and a temporary injunction pending appeal. The applicants also seek that the notice of appeal filed be deemed duly filed and properly on record.

2. The application is predicated on the grounds on the face of the application which have been rehashed in the supporting affidavit of the 2<sup>nd</sup> applicant dated 24<sup>th</sup> November 2025, sworn on behalf of the 1<sup>st</sup> applicant, where he states that they are aggrieved by the impugned ruling which was delivered on 30<sup>th</sup> June 2025; in the matter subject of the intended appeal the respondents filed responses and submissions late and without leave; in turn the applicants filed a notice of compliance and a preliminary objection on 28<sup>th</sup> May 2025, which the Judge did not consider, resulting in denial of a fair hearing; following the ruling, the respondents unlawfully re-entered the suit properties and commenced developments including borehole drilling and tank construction through Kenya Red Cross/PACIDA; the applicants filed and served a notice of appeal dated 10<sup>th</sup> July 2025, lodged on 12<sup>th</sup> July 2025 and served on 13<sup>th</sup> July 2025; the certified proceedings and uncertified ruling were only received on 7<sup>th</sup> October 2025, confirmed by a delay certificate dated 24<sup>th</sup> October 2025; the delay was due to the court registry; it was not intentional; granting an extension would not prejudice the respondents, while ongoing land developments threaten to undermine the appeal unless interim preservation orders are issued.

3. In opposing the application, the 6<sup>th</sup> respondent has filed a replying affidavit sworn on 26<sup>th</sup> January 2026 and states that the applicants' motion is incompetent and an abuse of the court process; further the time allowed for the applicants to file a record of appeal has not yet lapsed since the applicants collected certified proceedings on 7<sup>th</sup> October 2025, and the certified ruling on 12<sup>th</sup> November 2025; the Red Cross has never been a party to this dispute; and any orders sought regarding the Red Cross are unavailable to the applicants and would constitute a new cause of action; the Court lacks jurisdiction to entertain the application; a notice of appeal regarding the judgment remains active and has not been withdrawn.
4. Further, the respondents categorically deny entering the applicants' land, asserting that the respondents have remained within their own duly registered parcels; the applicants are merely attempting to frustrate the respondents' quiet possession and use of their property.
5. Learned counsel for the applicants has filed submissions and a list of authorities, both dated 11<sup>th</sup> December 2025, and submits that the guiding principles for extension of time were illustrated in the case of **Leo Sila Mutiso vs. Rose Hellen Wangari Mwangi, Civil Application No. 251 of 1997**. He contends that the delay in filing the record of appeal was due to the delay in obtaining the certified copies of the proceedings rather than a lack of diligence. After the

ruling on 30<sup>th</sup> June 2025, the applicants requested certified proceedings by letter dated 10<sup>th</sup>

July 2025, but the court did not provide these documents for over 120 days. The typed proceedings and certificate of delay were issued on 24<sup>th</sup> October 2025, and the certified ruling was released on 7<sup>th</sup> November 2025. Counsel asserts that it was impossible to compile the record of appeal without these materials and maintains that the delay is procedurally explained and legally excusable.

6. On arguability of the intended appeal, counsel submits that the intended appeal raises substantial and bona fide issues, such as whether the ELC erred by converting a mention into a hearing without proper notice and whether it failed to consider substantive grounds in a review application; and whether the judgment on grounds of *res judicata* was sufficient. In support of his contention counsel cites **Damji Pragji Mandavia vs. Sara Lee (K) Limited [2014] eKLR**, where this Court held that an arguable appeal is not one that must succeed but one that raises a legitimate question. Counsel contends that the issues raised are neither frivolous nor idle.
7. Furthermore, it is argued that denying the extension would permanently deprive the applicants of their constitutional right to an appeal, whereas granting it would not prejudice the respondents. Citing **Article 159(2)(d)** of the Constitution, counsel urges the Court to prioritise substantive justice over procedural technicalities.
8. The respondents did not file any submissions.

9. I have considered the application, the supporting affidavit, the replying affidavit and the applicant's submissions. The issue for determination is whether the applicant is deserving of an extension of time to file a record of appeal.
10. This is an omnibus application seeking not only an extension of time but also a stay pending hearing and determination. It is an application consisting of prayers for hearing before a single judge and those for hearing before a full bench. Sitting as a single Judge, my jurisdiction is limited to the prayer on extension of time. The Court in **Associated Construction Company (K) Ltd vs. Kyamu Construction & Engineering Ltd (Civil Application E047 of 2022) [2022] KECA 872 (KLR)**, captured a similar scenario as follows:

***“This is yet another of those untenable omnibus applications where the applicant, Associated Construction Co (K) Ltd, seeks, in the same application, an order for extension of time to file an appeal out of time and an order for stay of execution. This Court has decried this practice, which is taking root among some practitioners at an alarming rate. Recently in Abdulrazak Rageh Haji v. Mahadho Abdulrazak Adichare, CA No. E030 of 2020 I stated as follows regarding this practice:***

*“Before me is one of those omnibus applications that this Court has decried time and again. (See, for example, Riccardo Fannelli & 2 Others v. Frigrieri Graziano, Civil Application No. 51 of 2015 and Christopher*

*Iddi Moto & 15 Others v. Chiriba Nyambu Barua, Civil Application No 43 of 2014). The applicant seeks extension of time*

to file a notice of appeal and in the same application, an order for stay of execution of the judgment and decree that he intends to appeal. It is not rocket science to appreciate that under the Court of Appeal Rules an application for extension of time is the remit of a single judge whilst an application for stay of execution is the business of the full court. How exactly the same application can be heard in instalments, first by a single judge, and subsequently by the full Court, is not clear to me. Plus, a party cannot obtain stay of execution of a decree or judgment of the High Court without first filing a notice of appeal!

This practice has to stop forthwith. For purposes of this application, and in deference to Article 159 (2) (d) of the Constitution, I shall treat the application before me as one solely concerned with extension of time. After all, that is the only issue that I can legitimately deal with as a single Judge.”

11. Similarly, in ***Imbisi vs. Kakamega & 2 Others (Civil Application E033 of 2024) [2024] KECA 1205 (KLR)***, this Court stated; -

***“Despite the lack of responses, I must begin by observing that the omnibus nature of the application is not merely a technical error, it rises to the level of procedural impropriety respecting the prayers for stay of execution. This is because that prayer, under Rule 5(2) (b) of the Court of Appeal Rules, can only be heard by a bench of three judges. On the contrary, the prayer for extension of time, which must precede the prayer for stay of execution, can only be heard by a single***

***judge. While I do not condone the  
advocate's seemingly cavalier attitude***

**towards rules of procedure and even substantive rules (he, for example, copiously cites Order 42 of the Civil Procedure Rules which have no application to this Court), in the interest of substantive fairness to his client, I elected to consider the only prayer that is properly before me as a single judge: the prayer for extension of time.”**

12. Likewise, I will only deal with the prayer seeking extension of time. For now, the rest of the application will fall by the wayside. Should the applicants be successful, they may move the Court appropriately for other orders before the appropriate forum.

13. As relates to extension of time **rule 4** of the Rules states as follows; -

***The Court may, on such terms as may be just, by order, extend the time limited by these Rules, or by any decision of the Court or of a superior court, for the doing of any act authorized or required by these Rules, whether before or after the doing of the act, and a reference in these Rules to any such time shall be construed as a reference to that time as extended.***

**14.** In expounding the factors to be considered in an application for extension of time the Supreme Court had this to say in **Salat vs. Independent Electoral and Boundaries Commission & 7 Others (Application 16 of 2014) [2014] KESC 12 (KLR) (Civ) (4 July 2014) (Ruling);**

***“16. Discretion to extend time was indeed unfettered.***

***It was incumbent upon the applicant to explain the reasons for delay in making the application for extension and whether there were any extenuating circumstances that could enable the court to exercise its discretion in favour of the applicant.***

***17. The court ought to consider the following principles in exercising the discretion to extend time for filing an appeal:***

- a. Extension of time was not a right of a party. It was an equitable remedy that was only available to a deserving party at the discretion of the court;***
- b. A party who sought extension of time had the burden of laying a basis for it to the satisfaction of the court;***
- c. Whether the court ought to exercise the discretion to extend time, was a consideration to be made on a case-by- case basis;***
- d. Whether there was a reasonable reason for the delay, which ought to be explained to the satisfaction of the court;***
- e. Whether there would be any prejudice suffered by the respondents if the extension was granted;***

***f. Whether the application had been brought without undue delay; and***

***g. Whether in certain cases, like election petitions, public interest ought to be a consideration for extending time”.***

**15. Abdul Azizi Ngoma vs. Mungai Mathayo [1976] KLR 61, 62,**

this Court held:

***“We would like to state once again that this court’s discretion to extend time under rule 4 only comes into existence after ‘sufficient reason’ for extending time has been established, and it is only then that other considerations such as the absence of any prejudice and the prospects or otherwise of success in the appeal can be considered.”***

16. The ruling subject of the intended appeal was delivered on 30<sup>th</sup> June 2025. A notice of appeal dated 10<sup>th</sup> July 2025 was lodged on 12<sup>th</sup> July 2025 and served on 13<sup>th</sup> July 2025. The notice of appeal was duly filed and served in compliance with **rule 77** of the Rules.

17. **Rule 84**, as a follow-up to **rule 77**, states as follows:

***(1) Subject to rule 118, an appeal shall be instituted***

***By lodging in the appropriate registry, within sixty days after the date when the notice of appeal was lodged—  
Institution of appeals.***

***(a) a memorandum of appeal, in four copies;***

**(b) the record of appeal, in four copies;**

**(b) the prescribed fee; and**

**(d) security for the costs of the appeal:**

**Provided that where an application for a copy of the Proceedings in the superior court has been made in accordance with sub-rule (2) within thirty days after the date of the decision against which it is desired to appeal, there shall, in computing the time within which the appeal is to be instituted, be excluded such time as may be certified by the registrar of the superior court as having been required for the preparation and delivery to the appellant of such copy.**

**(2) An appellant shall not be entitled to rely on the proviso to sub-rule (1) unless the appellant's application for such copy was in writing and a copy of the application was served upon the respondent.**

**(3) The period specified in sub-rule (1) for the institution of appeals shall apply to appeals from superior courts in the exercise of their bankruptcy jurisdiction.**

18. There is no proof that the letter bespeaking the proceedings was copied to the respondents, which means that the record of appeal ought to have been filed 60 days from the date the notice of appeal was lodged, which translates to 9<sup>th</sup> September 2025.

19. The applicant alludes to having been supplied with the typed proceedings on 7<sup>th</sup> of October, 2025. A certificate of delay

(though not necessary in the circumstances is said to have been issued on 24<sup>th</sup> October 2025). The delay caused by the late receipt of proceedings was just about a month. This application was filed on 24<sup>th</sup> November 2025 slightly beyond a month after the receipt of typed proceedings.

20. All in all, I find that the delay has been sufficiently explained and it is not inordinate; mainly caused by the waiting for the typed proceedings. No prejudice has been demonstrated that is likely to be suffered by the respondents. The notice of appeal having been filed on time, I direct that the record of appeal be filed and served within the next 30 days of this ruling.
21. The costs of the application will abide by the outcome of the appeal.

**Dated and delivered at Nyeri this 30<sup>th</sup> day of January, 2026.**

**ALI-ARONI**

.....  
**JUDGE OF APPEAL**

*I certify that this is  
a true copy of the  
original.*

*Signed*  
**DEPUTY REGISTRAR**