



REPUBLIC OF KENYA



**KENYA LAW**  
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**Kabwi v Kabunduru (Civil Application E178 of 2025)  
[2026] KECA 36 (KLR) (23 January 2026) (Ruling)**

Neutral citation: [2026] KECA 36 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NYERI  
CIVIL APPLICATION E178 OF 2025  
A ALI-ARONI, JA  
JANUARY 23, 2026**

**BETWEEN**

**JEREMIAH KABWI ..... APPLICANT**

**AND**

**JOSPHAT KABUNDURU ..... RESPONDENT**

*(Being an application for extension of time to file and serve an appeal out of time against the Judgment of the Environment and Land Court at Meru (Mboya, J.) delivered on 9th October 2025 in ELCA Case No. E028 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 and 5(2) of the Court of Appeal Rules 2022 ('the Rules'), seeking a stay of execution and extension of time to file and serve the record of appeal out of time.
2. The application is predicated on the grounds on the face of the application, which are rehashed in the undated supporting affidavit sworn by the applicant, who states that the judgment being appealed from was delivered on 9<sup>th</sup> October 2025, granting the respondent full entitlement to L.R. No. Nyambene/Uringu/III/978. Dissatisfied, the applicant instructed his counsel to file a notice of appeal, which was duly filed on 23<sup>rd</sup> October 2025. The advocate faced challenges compiling the record due to extensive documentation and work pressure; all necessary documents have been requested to complete the appeal record. Any mistakes or delays by counsel should not affect the applicant. Further, he avers that the draft memorandum of appeal raises significant legal issues warranting the court's determination, particularly regarding customary law.
3. The applicant further states that the second cause of the delay was that he thought it was a wise time to consult with elders before proceeding with this appeal, which consultations took time. The applicant asserts that if the orders he seeks are not granted, his constitutional right to a fair hearing under Article



50(1) of *the Constitution* may be compromised. Additionally, the intended appeal will be rendered ineffective if execution or further actions regarding the suit property are not stayed.

4. The respondent has filed a replying affidavit sworn on 5<sup>th</sup> December 2025, and claims that the application is frivolous and an abuse of court process, stating that, being a successful litigant, he is entitled to enjoy his judgment. The respondent further contends that the applicant aims to cause unnecessary delays in using his land without a valid reason.
5. Further, the respondent contends that the applicant has not demonstrated, nor has he provided an undertaking to the Court, that he will comply with any conditions that the Court may set if the orders sought are granted. Despite this being a second appeal, a review of the applicant's memorandum of appeal reveals that it raises issues of fact, whereas this Court's mandate is limited to matters of law. The applicant has failed to show that he has valid grounds for appeal with a reasonable chance of success. The application is without merit and should be dismissed with costs.
6. Learned counsel for the applicant has filed an undated submission and submits that although a notice of appeal was filed promptly on 23<sup>rd</sup> October 2025, the applicant failed to file the record of appeal on time. He attributes this delay to: administrative hurdles, including the time required to extract proceedings and documents from the lower court in Tigania; personal pressure; and consultations with elders regarding the dispute, a process that took longer than expected.
7. Counsel argues that the respondent has not demonstrated any prejudice that cannot be addressed by an award of costs. He contends that denying the application would lock the applicant out of the appellate process over a procedural technicality, leading to grave injustice. In support of the contention, counsel relied on *Salat vs. Independent Electoral and Boundaries Commission & 7 Others* (Application 16 of 2014) [2014] KESC 12 (KLR) (Civ) (4 July 2014) (Ruling), which establishes that while extension of time is not a right, it is an equitable remedy available to parties who provide a reasonable explanation for delay. Counsel submits that the court should exercise its discretion to grant the extension based on all the above factors.
8. The respondent did not file submissions.
9. I have considered the application, the supporting affidavit, the replying affidavit and the applicant's submissions. For starters, the application before the Court is well described as an omnibus application. It contains a single judge's application as well as prayers that ought to be placed before a full bench. The court has repeatedly frowned at such applications. An application for an extension of time must first be heard before an application for a stay of execution. In a similar scenario, this Court had this to say in *Imbisi vs. Kakamega & 2 Others* (Civil Application E033 of 2024) [2024] KECA 1205 (KLR),

“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.”



10. As in the above-quoted case, I will not penalize the applicant for the mix-up, but will confine myself to the issue rightly before this forum, which is the application for an extension of time to file an appeal out of time. Indeed, Rule 4 of the Court of Appeal Rules states that; -

he 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.

11. It is not clear why counsel made this application on the 25<sup>th</sup> of November 2025, as it is not in dispute that the judgment subject of the intended appeal was delivered on 9<sup>th</sup> October 2025, and the notice of appeal was duly lodged on the 23<sup>rd</sup> of October 2025, in accordance with rule 77 of the Rules. Rule 84 requires that an appeal be filed 60 days after the lodging of the notice of appeal, subject to the rule's proviso. Though the applicant alludes to a copy of the letter bespeaking the proceedings, none was annexed to the application. That as it may be, from 23<sup>rd</sup> October 2025, the 60 days expired on 23<sup>rd</sup> of December, 2025, and, considering the court's calendar, where time stops running from 21<sup>st</sup> December to 14<sup>th</sup> January, the time for filing the appeal lapsed on 16<sup>th</sup> of January 2026. The application was prematurely filed.

12. Applications take some time before they are heard due to the Court's busy calendar. For now, the filing of the record is late by two days, which is not inordinate and was caused by counsel's seeming ignorance, as he ought to have filed the record of appeal, having said that all necessary documents were available, instead of seeking an extension of time when he moved the Court. It was premature. I agonised over whether to decline the application, as it was unnecessary at the time of filing. However, in the interest of justice and so as not to punish the litigant due to an oversight of counsel, I will allow prayer 4 of the application. The other prayers for lack of jurisdiction fall by the wayside.

13. The record of appeal must be filed within the next 30 days of this ruling.

14. Costs will abide by the outcome of the appeal.

**DATED AND DELIVERED AT NYERI THIS 23<sup>RD</sup> DAY OF JANUARY, 2026.**

**ALI-ARONI**

.....

**JUDGE OF APPEAL**

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

Signed

**DEPUTY REGISTRAR**

