



REPUBLIC OF KENYA



KENYA LAW
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**Kimotho v Kirinyaga County Government & another (Civil Application
E187 of 2025) [2026] KECA 17 (KLR) (23 January 2026) (Ruling)**

Neutral citation: [2026] KECA 17 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NYERI
CIVIL APPLICATION E187 OF 2025
A ALI-ARONI, JA
JANUARY 23, 2026**

BETWEEN

SUSAN WANJIRU KIMOTHO APPLICANT

AND

KIRINYAGA COUNTY GOVERNMENT 1ST RESPONDENT

LUCY WAMBUI MURIITHI 2ND RESPONDENT

*(Being an application for an enlargement of time to lodge a notice of appeal
from the Judgment and Decree of the Environment and Land Court at Kerugoya
(Mutungi, J.) delivered on 13th November 2025 in ELRC No. 2437 of 2017)*

RULING

1. Before the Court is an application by way of a notice of motion dated 22nd December 2025, brought pursuant to rules 4, 47 and 49 of the Court of Appeal Rules 2022 ‘(the Rules’), seeking an enlargement of time to lodge a notice of appeal, stay of execution orders and an order for status quo in respect to the suit property.
2. The application is predicated on the grounds on the face of the application, which are rehashed in the supporting affidavit sworn by the applicant on 22nd December 2025, wherein she states that judgement of the High Court was delivered on 13th November 2025; she was not informed of the delivery of the impugned judgment by her previous counsel, consequently, she was unable to lodge the notice of appeal within the prescribed timeline; if the orders sought are not granted she stands to suffer irreparably as the 1st respondent shall execute the judgment to the applicant’s detriment; she has an arguable appeal with a high chance of success; this application has been brought without undue delay and it is in the best interest of justice that the same is allowed; no prejudice will be occasioned to the respondents if the orders sought are granted and this Court has an inherent power to enlarge time to enable the applicant lodge the notice of appeal out of time.



3. The respondent has not filed a response.
4. Learned counsel for the applicant has filed submissions dated 12th January 2026 and submits that the dispute involves land parcel No. Kabare/Nyangati/5908, which the High Court found was properly acquired by the 1st respondent. The judgment was delivered on 13th November 2025, and the notice of appeal was lodged on 26th November 2025, resulting in a delay of 14 days.
5. Counsel submits that the applicant was not informed of the judgment by her previous counsel and was therefore unable to lodge the notice of appeal within the prescribed time. In support of the submission, counsel relied on *Henry Mukora Mwangi vs. Charles Gichina Mwangi* (Civil App. No. Nai. 26 of 2004) where this Court reaffirmed its unfettered discretion and cited *Mwangi vs. Kenya Airways Limited*, [2003] KLR 486, where the Court stated that guidelines on what a Court should consider when dealing with an application for extension of time under rule 4 of the Rules are well settled.
6. On the length of delay, counsel submits that the delay is not inordinate and ought to be excused. The reason for delay is advanced as reasonable and worthy of consideration as it was a mistake of the former counsel. On chances of the appeal succeeding, counsel relies on *Joseph Wanjohi Njau vs. Benson Maina Kabau* (Civil App. No. 97 of 2012), where this Court held that an arguable appeal is "not one that must necessarily succeed but is one which ought to be argued fully before the Court". He also cited *Richard Nchapi Leiyagu vs. IEBC & 2 Others* [2013] KECA 282 (KLR), where this Court affirmed that the right to a hearing is a well-protected constitutional right and the cornerstone of the rule of law. Dismissing suits should only be done to protect the integrity of the process and must remain proportional. Further counsel submits that if the respondents proceed to execute the judgment, the appeal shall be rendered nugatory.
7. Yet again, an omnibus application finds itself in Court with a prayer squarely for the consideration of a single judge and two for consideration by a full bench. This practice is murky and untidy. This Court, presided over by a single judge, can only deal with an extension of time. Only if the same is successful can the applicant move a full bench under rule 5(2)(b). In *Associated Construction Company (K) Ltd vs. Kyamu Construction & Engineering Ltd* (Civil Application E047 of 2022) [2022] KECA 872 (KLR), this Court stated:

"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.”

8. Similarly, I will only deal with the prayer seeking the extension of time. Should the applicant be successful, he may apply for other orders for hearing before the correct forum.
9. I have considered the application, the supporting affidavit and the applicant’s submissions. The issue for determination is whether the applicant is to be granted an extension of time to file a notice of appeal out of time.
10. Rule 4 of the Court’s Rules provides 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.
11. The Supreme Court in *Salat vs. Independent Electoral and Boundaries Commission & 7 Others* (Application 16 of 2014) [2014] KESC 12 (KLR)(Civ)(4 July 2014) summed up the applicable considerations as follows:
 - i. Extension of time is not right of a party. It is an equitable remedy that is only available to a deserving party at the discretion of the Court;
 - ii. A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the Court;
 - iii. Whether the court should exercise the discretion to extend time, is a consideration to be made on a case-to- case basis;
 - iv. Whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the Court;
 - v. Whether there will be any prejudice suffered by the respondents if the extension is granted;
 - vi. Whether the application has been brought without undue delay; and,
 - vii. Whether in certain cases, like election petitions, public interest should be a consideration for extending time.
12. The applicant has explained sufficiently why there was a delay in lodging the notice of appeal and that the same was lodged after a short delay of 14 days, which by all means is not inordinate. I have looked at the grounds of appeal, and they do not appear frivolous. In the circumstances, I allow the application.
13. The notice of appeal is deemed as duly lodged and may be served within the next 7 (seven) days. The record of appeal be filed and served within the next 30 days.
14. Costs of the application will abide by the outcome of the appeal.

DATED AND DELIVERED AT NYERI THIS 23RD DAY OF JANUARY, 2026.



ALI-ARONI

JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR

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