



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**Lusololi v Mutondo (Environment and Land Miscellaneous Application
E046 of 2025) [2026] KEELC 252 (KLR) (29 January 2026) (Ruling)**

Neutral citation: [2026] KEELC 252 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E046 OF 2025
A NYUKURI, J
JANUARY 29, 2026**

BETWEEN

LAURENT LUSOLOLI APPLICANT

AND

FRANCIS POPO MUTONDO RESPONDENT

RULING

Introduction

1. Vide a Notice of Motion dated 25th June 2025, the applicant sought the following orders;
 - a. That this Honourable court be pleased to grant leave to the applicant to file appeal out of time against the decision and judgment of Hon. P. MUTUA (CM) Chief Magistrates Land and Environment Suit No. E064 OF 2020 delivered on 26th February 2025.
2. The application is supported by the affidavit of the applicant dated 24th June 2020. He averred that judgment in Kakamega Chief Magistrates Land and Environment Suit No. E064 OF 2020 was delivered on 26th February 2025. That he intended to appeal against the judgment but time elapsed before he could lodge his appeal. That he has a good appeal with overwhelming chances of success. That failure to lodge the appeal in time was due to delay in issuance of court proceedings at the registry. That the application was made in good faith and without undue delay.
3. The application is opposed. The Respondent filed a replying affidavit sworn on 27th October 2025. He stated that the applicant neither demonstrated that he applied for proceedings in time nor that he does that proceedings were typed outside time, hence he failed to substantiate his allegations.
4. Further that no certificate of delay was availed and no draft memorandum of appeal was attached to demonstrate that the appeal has high chances of success.



5. The application was disposed by way of written submissions. On record are submissions filed by the applicant dated 10th November 2025.

Applicant's submissions

6. The applicant submitted that the delay in filing appeal was caused by delay in supply of court proceedings from the lower court registry. Further that he had been visiting the registry for about three months to obtain proceedings in vain. He argued that he has a good appeal with chances of success. It was his case that the respondent was given a small portion of land measuring 5 feet by the applicant's father one Paulo Kanduyi now deceased, who was the registered proprietor of parcel Isukha/Mukhonje/268 and that it was agreed that when he grows up he should vacate the land and buy his own land. That the applicant conducted Succession proceedings and obtained title for a portion of the said land measuring 0.79 Hectares. That the respondent has encroached on a bigger portion measuring 1 ¼ acres, which is bigger than what was gifted to him. That currently the applicant occupies a portion measuring less than 1 ½ acres. He maintained that he deserved the orders sought.

Analysis and determination.

7. I have considered the application, the affidavit in support, the response and submissions. The only issue that arise for the court's determination is whether there is good and sufficient cause to extend time for filing appeal against the decision made in Kakamega CMC ELC Case No. E064 OF 2020 delivered on 26th February 2025.

8. Section 79G of the *Civil procedure Act* provide as follows;

“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. It is therefore clear that an appeal against a decision of the subordinate court to this court ought to be filed within 30 days of delivery of the decision sought to be appealed against. However, where there is a good and sufficient cause, the court has discretion to grant leave for a party to file appeal out of time.
10. In the case of Nicholas Kiptoo Arap Korir Salat v Independent Electoral and Boundaries Commission & 7 Others [2014] e KLR, the Supreme court had the following to say on extension of time for filing an appeal;
 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 Respondents if the extension is granted.
6. Whether the application has been brought without undue delay; and
7. Whether in certain cases, like election petitions, public interest should be a consideration for extending time.”
11. Therefore, to obtain leave to appeal out of time the applicant is obligated to explain the reason for delay to the satisfaction of the court, as the discretion to grant leave ought not be exercised whimsically or arbitrarily. In the instant case, the applicant blamed the delay on an alleged delay in obtaining certified proceedings. The applicant neither states when he applied for proceedings if at all and when they were supplied to him nor attach a certificate of delay to show that indeed there was a delay in supplying him with proceedings. Therefore, the excuse given by the applicant in this matter is implausible. In the case before me, the impugned ruling is not attached but is said to have been delivered on 26th February 2025. The instant application was filed on 26th June 2025, which is a period of four months from the date of delivery of the impugned decision. In my view, this is an inordinate delay, yet no plausible explanation has been given by the applicant. I therefore find and hold that the applicant has failed to explain to the court’s satisfaction the delay in filing the appeal, and hence does not deserve the orders sought.
12. In the end, I find and hold that the application dated 25th June 2025 lacks merit and the same is hereby dismissed with costs to the respondent.
13. It is so ordered

DATED, SIGNED AND DELIVERED AT KAKAMEGA IN OPEN COURT/VIRTUALLY THIS 29TH DAY OF JANUARY 2026 THROUGH MICROSOFT TEAMS VIDEO CONFERENCING PLATFORM

A. NYUKURI

JUDGE

In the presence of;

Applicant in person

No appearance for the respondent

Court Assistant: Delphine

