



**Shira v Konchory & another (Environment and Land Miscellaneous
Case E004 of 2025) [2025] KEELC 5626 (KLR) (30 July 2025) (Ruling)**

Neutral citation: [2025] KEELC 5626 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KILGORIS
ENVIRONMENT AND LAND MISCELLANEOUS CASE E004 OF 2025
MN MWANYALE, J
JULY 30, 2025**

BETWEEN

SITONIK OLE SHIRA APPLICANT

AND

KIPANGAS SERENY KONCHORY 1ST RESPONDENT

SAITOTI KONCHORY 2ND RESPONDENT

RULING

1. Coming up for determination is the Notice of Motion application dated 28th March 2025 seeking the following orders;
 - i. Spent.
 - ii. Spent.
 - iii. That this Honourable court be pleased to grant the applicant leave to appeal out of time against the judgement delivered by Hon W.C Waswa SRM on October 4th 2024.
 - iv. That the Honourable Court to issue an order for stay of execution of the Judgement entered and delivered herein against the Applicant on October 4th 2024 pending hearing and determination of the intended Appeal.
2. The grounds in support of the application are interalia that.
 - i. The Applicant's previous advocates did not inform him of the judgement delivered on 4th October 2024, in respect of two consolidated matters being Kilgoris ELC Case No. 17/2024 and Kilgoris ELC Case No. 15/2024.



- ii. The Applicant after being made aware of the judgment instructed the previous advocates to file an appeal which was not filed, Application has been filed without delay. The supporting affidavit in respect of the application reiterates the grounds status of the Appeal.
 - iii. That there being no appeal filed the request for a stay of execution had no foundation to stand on, yet no evidence of any execution proceedings were exhibited.
 - iv. The Applicant filed with leave of the court, a further affidavit in which the deponed that the intended appeal raised triable issues.
 - v. The application was argued by way of written submissions, which the court has considered.
3. The only issue for determination is whether the application is merited and has copy annexed a copy of a decree herein, copies of correspondences between the previous, a draft Memorandum of Appeal.
4. The 2nd Respondent opposed the application vide his Replying affidavit in which he deposed interalia that
- i. The applicant was well aware of the judgement date having testified in the suit as a witness and that he was in court not on merits but to seek sympathy.
 - ii. That no correspondences were attached showing the previous advocates informing him.
 - iii. In essences the applicant seeks the exercise of the court’s discretion to enlarge time to file an appeal.
5. The principles for enlargement of time were stated by the court of appeal in its decision in the case of Leo Silla Mutiso vs Rose Hellen Wangari Nairobi Civil Application 255/1997 where the court held interalia;
- “it is now well settled that the decision whether or not to extend the time for appealing is essentially discretionary. It is also settled that in general the matters which the court takes into account in deciding whether to grant an extension of time are first the length of the delay, secondly the reason for the delay, the chances (possibly) of the appeal succeeding if the application is granted and fourthly, the degree of prejudice to the Respondent if the application is granted.....”
- 6. On the length of the delay, the application was filed in March 2025 while the judgment was delivered in October 2024, there was a delay of about 5 months, which delay was not very inordinate.
 - 7. On the reasons for the delay, the Applicant advanced the reasons for delay as non-communication from the previous advocates. No evidence was adduced towards this, but the court has in previous, similar applications considered the issue of non-communication by Advocates to be sufficient reason and I find no reason to depart from this.
 - 8. Without going into the merits or otherwise of the appeal, the Memorandum of Appeal raises arguable issues.
 - 9. As the decree of the trial court has not been executed, the court finds that no prejudice will be visited upon the respondents.
 - 10. In a nutshell the court finds that the application is merited and proceeds to grant leave to the Applicant to file an Appeal out of time.



11. The Draft Memorandum of Appeal is hereby deemed as properly filed. The Appellant to file and serve the record of Appeal within 60 days.
12. Towards this end the proceedings to be typed within 45 days.
13. Parties to maintain the status quo currently prevailing on the ground and on the register of Transmara/Nkararo/237 pending hearing and determination of the intended appeal.

DATED AT KILGORIS THIS 30TH DAY OF JULY, 2025.

HON. M.N MWANYALE

JUDGE

In the presence of

CA – Emmanuel/Sylvia/Sandra

Mr. Ochwangi for 2nd Respondent

Mr. Leteipa for the Applicant

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