



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT CHUKA

ELC LAND MISC APPLICATION NO. E022 OF 2025

FRANCIS MUKINDE MUGWIKA.....

.....APPLICANT

=VERSUS=

**DANIEL MUGAO KAMWARA.....1ST
RESPONDENT**

**JAMES MUGAMBI KAMWARA.....2ND
RESPONDENT**

**KIMATHI MUCOKA KARINGA.....3RD
RESPONDENT**

**MUTHURI MUCOKA KARINGA.....4TH
RESPONDENT**

RULING

- 1.** Falling for determination in this ruling is the notice of motion dated 24/9/2025, brought by **Francis Mukunde Mugwika**. Through it, the applicant seeks; (i) an order enlarging the time for lodging an appeal against the ruling rendered on 10/7/2025 in **Marimanti PMCCC No 1 of 2014**; and (ii) an order staying execution of the said ruling, pending the hearing and disposal of the intended appeal.

2. The application was premised on the grounds outlined in the motion and in the applicant's two affidavits dated 24/9/2025 and 28/10/2024 respectively. It was canvassed through written submissions dated 28/10/2025, filed by **M/s G. M Wanjohi, Mutuma & Co Advocates**. The case of the applicant is that, he is the beneficial owner of a six acre parcel of land in Kathuki Village, Maragwa Location, Tharaka Nithi County. He sued the respondents in **Marimanti PMCCC No 1 of 2024** seeking to stop them from interfering with his quiet possession, occupation and use of the land. The respondents filed a defence and counterclaim. The respondents fixed the matter for hearing but he was not made aware of the hearing date. Consequently, his primary suit was dismissed and the respondents' counterclaim was heard exparte. The lower court subsequently rendered a judgment on 21/1/2016 in which it allowed the respondents' counterclaim.
3. The applicant adds that he subsequently filed an application dated 3/1/2025 seeking orders setting aside the judgment and granting him leave to defend the suit. His said application was dismissed vide a ruling rendered by the lower court on 10/7/2025. He is aggrieved by the said ruling and wishes to challenge it through an appeal to this court. The time for lodging the appeal has, however, lapsed.
4. It is the applicant's case that the delay of 2 months was occasioned by the fact that he had difficulties in raising the requisite court fees. He contends that he has an arguable appeal that raises triable issues and that he stands to suffer

prejudice if the plea for enlargement of time is declined because he has a home on the suit land.

5. The respondents opposed the application through a replying affidavit sworn on 7/10/2025 by **James Mugambi Kamwara**. Their case is that the impugned ruling was rendered by the trial court in the presence of the applicant. They argue that the applicant has not tendered a satisfactory explanation for the delay. They further argue that the applicant does have arguable grounds of appeal because his advocate on record was duly served with hearing notices, adding that the applicant did not seek an order reinstating their suit.
6. It is the case of the respondents that granting the applicant leave will prejudice them because the judgment of the trial court was rendered on 21/1/2016. Emphasizing that the 2nd respondent is the registered proprietor of the suit land, the respondents state that the applicant is a trespasser on the suit land. They further state that the applicant has not satisfied the requirements for granting an order of stay of execution. They urge the court to reject and dismiss the application.
7. The court has considered the application, the response to the application and the parties' respective submissions. The following are the two issues that fall for determination:
 - (i) Whether the application meets the criteria for enlargement of time for lodging an appeal to this court; and
 - (ii) Whether the application meets the criteria for granting an

order of stay of execution pending the hearing and disposal of an appeal.

8. The limitation period for lodging an appeal before this court against judgments or rulings of lower courts is contained in **Section 16A** of the **Environment and Land Court Act** and **Section 79G** of the **Civil Procedure Act**. The frameworks in the two statutes provide for a limitation period of 30 days from the date of delivery of the decision. The two frameworks vest in this court discretionary jurisdiction to enlarge the limitation period. The legislated guiding principle in the two frameworks is that the discretionary jurisdiction should be exercised on the basis of good and sufficient cause.
9. The general jurisprudential principles that guide our courts whenever invited to exercise the above jurisdiction were outlined by the Supreme Court of Kenya in the case of ***Nicholas Kiptoo Arap Korir Salat v Independent electoral and Boundaries Commission & 7 Others (2014) eKLR*** as follows:
 1. ***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;***
 2. ***A party who sought extension of time had the burden of laying a basis for it to the satisfaction of the court;***

- 3. Whether the court ought to exercise the discretion to extend time, was a consideration to be made on a case to case basis;**
- 4. Whether there was a reasonable reason for the delay, which ought to be explained to the satisfaction of the court;**
- 5. Whether there would be any prejudice suffered by the respondents if the extension was granted;**
- 6. Whether the application had been brought without undue delay; and;**
- 7. Whether in certain cases, like election petitions, public interest ought to be a consideration for extending time.”**

10. In ***Mukora Mwangi v Charles Gichina - Civil Application No. Nai 255 of 1997***, the **Court of Appeal** summed up the relevant principle as follows:

“It is now well settled that the decision whether or not to extend the time for appealing is essentially discretionary. It is also well-settled that, in general, the matters which this court takes into account in deciding whether to grant an enlargement of time are: first, the length of the delay; secondly, the reason for the delay; thirdly (possibly), the chances of the appeal succeeding if the application is granted; and fourthly, the degree of prejudice to the respondent if the application is granted.”

- 11.** Does the application satisfy the above criteria? The impugned ruling was rendered on 10/7/2025. The 30-day limitation period lapsed on 9/8/2025, which was a Saturday (a non-working day). The last day for lodging the appeal was therefore 11/8/2025. The application for enlargement of time was lodged on 24/9/2025. There was a delay of 43 days. Taking into account the fact that Parliament legislated a limitation period of 30 days, the delay of 43 days is certainly long. It is, however, one to be excused if a proper explanation for the delay is tendered.
- 12.** The explanation tendered by the applicant is that he is a man of the straw, hence he was unable to raise the requisite court filing fees. The allegation that the applicant is a man of the straw and was unable to raise the requisite filing fees of Kshs 1,500 has not been proved through evidence. The allegation that a litigant has been unable to access the seat of justice on account of lack of court filing fees is a serious one. The applicant had the duty of placing before court copies of his Kenya Revenue Authority tax returns for the relevant period to demonstrate that he was acutely impecunious that he could not raise the sum of Kshs 1,500 that was required for the purpose of filing a memorandum of appeal.
- 13.** That is not all. Kenya's justice system takes cognizance of poverty and provides a framework through which a pauper can approach the court and initiate proceedings without paying court fees. All that the pauper is expected to do is to move the court for exemption. Upon proving his pauperism, the court would exempt him from paying the statutory court

filing fees. The applicant did not utilize the above mechanism. Taking the foregoing into account, the court finds that the explanation tendered by the applicant is unsatisfactory.

- 14.** What are the chances of the appeal succeeding if the plea for enlargement of time is granted? The court has examined the application dated 12/5/2016 which the applicant exhibited and contended was the subject of the impugned ruling. The correct application is the one exhibited by the respondents. It is dated 3/1/ 2025. What clearly emerges from the two exhibits and from the totality of the evidence on record is that, the applicant had an advocate on record and the advocate was served with hearing notices. It also emerges from the application exhibited by the applicant, dated 12/5/2016, and the applicant's supporting affidavit of even date, that as early as 12/5/2016, the applicant was aware of the judgment of the trial court. The applicant elected to say nothing relating to the prosecution of the said application which, on its face, was filed in June 2016. He elected to do nothing for about 8 years only to come up with a duplicate application dated 3/1/2025. The delay of 8 years was not explained.
- 15.** That is not all. The applicant was aware from the judgment of the trial court that he was the primary claimant and his suit had been dismissed for non-attendance. Despite this, he did not bother to seek an order reinstating the dismissed primary suit. He instead sought "unconditional leave to defend the suit." He never applied to the trial court to reinstate his suit.

16. Clearly, even if this court were to overlook the delay and the absence of a satisfactory explanation for the delay, I do not think, in light of the above circumstances, the applicant can be said to have demonstrated that he has an arguable appeal.
17. On the degree of prejudice, given the above circumstances, the court takes the view that the respondents would stand to suffer greater prejudice were the court to grant the orders sought by the applicant.
18. For the above reasons, the court finds that the application dated 24/9/2025 does not meet the criteria for enlargement of time.
19. Does the application meet the criteria for granting an order of stay of execution pending the hearing and disposal of an appeal by this court? The plea for enlargement of time has been rejected for lack of merit. It automatically follows that there is no basis upon which to grant an order of stay of execution. Even if the plea for enlargement of time had succeeded, the order of stay of execution relates to the ruling dated 10/7/2025. What is contained in the said ruling is a negative order incapable of attracting an order of stay of execution. The result is that the application does not meet the criteria for granting an order of stay of execution pending the hearing and disposal of an appeal by this court.
20. In the end, for the reasons outlined above, the application dated 24/9/2025 is rejected and dismissed for lack of merit. In tandem with the principle in **Section 27** of the **Civil**

Procedure Act - that costs follow the event, the applicant shall bear costs of the miscellaneous application/suit

DATED, SIGNED AND DELIVERED AT CHUKA THIS 26TH DAY OF JANUARY, 2026.

B M EBOSO [MR]

ELC JUDGE

In the Presence of:

Ms. Nyokabi for the Applicant

Mr. Gitonga present but muted

Court Assistant - Nelly