



**Maleli & another (Suing as the Administrators of the Estate of John Mutusya Mumo - Deceased) v Kangethe & another (Environment and Land Appeal E162 of 2025) [2026] KEELC 206 (KLR) (20 January 2026) (Ruling)**

Neutral citation: [2026] KEELC 206 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT AND LAND APPEAL E162 OF 2025  
JG KEMEI, J  
JANUARY 20, 2026**

**BETWEEN**

**EUNICE KAMAENE MALELI ..... 1<sup>ST</sup> APPELLANT  
ESTHER LOKO MUTISYA ..... 2<sup>ND</sup> APPELLANT  
SUING AS THE ADMINISTRATORS OF THE ESTATE OF JOHN MUTUSYA  
MUMO - DECEASED**

**AND**

**HUMPHREY IHUGO KANGETHE ..... 1<sup>ST</sup> RESPONDENT  
JACKSON MUISYO MUTISYA ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. What is coming up for determination is the Appellant's application dated 25/8/25. The application is expressed to be anchored on the provisions of Section 1, 1A, 1B 3, 3A and 63 of the [Civil procedure Act](#); Order 42 Rule 6; Order 50 Rule 1; Order 51 Rules 1 and 3 of the Civil Procedure Rules; Section 13(5) & 16A of the Environment & [Land Act](#); Articles 40 and 50 of [the Constitution](#), 2010 and all other enabling provisions of the law seeking the following orders; That; -
  - a. Stay of execution and enforcement of the judgment delivered on 24/7/25 in CM ELC No E210 of 2022 – Humphrey Ihugo Kangethe v Jackson Muisyo Mutisya & Eunice Kamane Maleli & Esther Loko Mutisya be granted.
  - b. Leave to the applicants to appeal out of time against the judgment delivered on 24/7/25 be granted.



- c. Leave be granted to the law firm of M/s Albert Kamunde & Co Advocates LLP to come on record for the administrators of the estate of John Mutisya Mumo, deceased after delivery of judgment in place of Ms Ivy Adah atieno & Associates.
2. The application is premised on the grounds annexed thereto and the supporting affidavit sworn by the applicants on 25/8/25. They deponed that they are the duly appointed administrators of the estate of their father, the late John Mutisya Mumo who passed away on 8/8/2017. That the deceased was at the material times the registered proprietor of all the land known as House C14 – Kimathi Estate LR No 209/7383 (suit land) which forms part of the estate under administration. That they discovered recently that the 1<sup>st</sup> respondent instituted a suit namely ELC 967 of 2014 claiming ownership of the suit land which judgement was delivered in favour of the 1<sup>st</sup> respondent on 14/8/2017, 6 days after the demise of the late father on 8/8/2017. That no substitution of the deceased was effected thereafter thus depriving the estate of the deceased of the opportunity to be heard
  3. She asserted that her father was diagnosed with dementia and therefore had no capacity to defend himself or participate in the trial. She opines that the judgment in ELC 967 of 2014 was procured on the basis of misrepresentation, forged documents and material non-disclosure advanced by the 1<sup>st</sup> respondent leading to a judgement in his favour.
  4. That the 1<sup>st</sup> Respondent filed suit in CMELC No E210 of 2022 seeking to enforce the judgment of the court in ELC 967 of 2014 by way of eviction of the applicants and other beneficiaries. The court in its judgment delivered on 24/7/25 entered judgement in favour of the 1<sup>st</sup> Respondent against the estate of their deceased father directing eviction of the property within 30 days despite the proceedings having been instituted against the 2<sup>nd</sup> Respondent, a son of the deceased who is not one of the administrators of the deceased estate and who had no capacity to represent the said estate in the suit. It was their opinion that consequently the orders issued therein have no legal consequences having been obtained without due process and representation of the estate.
  5. That unless restrained the 1<sup>st</sup> Respondent will proceed to evict them from the suit premises thereby permanently depriving them of their lawful inheritance hence occasioning irreparable loss to the estate incapable of compensation by way of damages.
  6. The court was urged to grant the application.
  7. The application is opposed by the 1<sup>st</sup> Respondent vide the replying affidavit sworn on 19/11/25 where he deponed that the application is devoid of merit as the instant application and the appeal have been filed out of time and ought to be struck out. Further that the application has been overtaken by events as the judgement was duly executed and he has taken possession of the house and even undertaken renovations and rented out to third parties.
  8. That in CMELC No E210 of 2022 he sued the 2<sup>nd</sup> respondent was sued in his person capacity as he was in possession of the suit land and not a representative of the estate. That the applicants herein were enjoined in the suit and fully participated in the suit until judgment was delivered in his favour.
  9. That the applicants have not given cogent reason entitling them to the orders sought and urged the court to dismiss the application in the interest of justice and also to allow him enjoy the fruits of the judgement in a matter that he has been in court since 2014, a decade ago.
  10. The application is not opposed by the 2<sup>nd</sup> respondent
  11. I have read and considered the submissions filed by the applicants and now form part of this Ruling



12. On 25/11/25, the applicants informed the court that the 1st respondent had taken possession of the suit land, and that the prayer for a stay of execution of the judgment had therefore been overtaken by events. The court was urged to determine the only issue pending for determination, namely leave to file the appeal out of time.
13. Section 79G of the *Civil Procedure Act* provides that appeals originating from the subordinate court should be filed within thirty (30) days from the date of the decree or order appealed against. Section 95 of the said Act gives the court discretion to extend the time as it deems fit even if the time originally fixed has expired.
14. Order 50 Rule 6 of the Civil Procedure Rules empowers the court to extend time upon sufficient cause being demonstrated. On that ground alone, it is my finding that there was inordinate delay in filing the instant application for leave.
15. In an application for leave to appeal out of time, an Applicant must satisfy the court that it had good and sufficient cause for not filing the appeal in time. The Supreme Court of Kenya in the case of County Executive of Kisumu v County Government of Kisumu & Others [2017] eKLR while relying on its decision in the case of Nicholas Kiptoo Arap Korir Salat v IEBC & 7 others Application No. 16 of 2014 [2014] eKLR the apex court stated as follows:

“the under-lying principles that a Court should consider in exercise of such discretion:

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 a 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.”
16. Further, the Court of Appeal in *Vishva Stone Suppliers Company Limited v RSR Stone [2006] Limited [2020] eKLR* outlined the guiding principles in such cases inter alia:
    - “(viii) The law does not set out any minimum or maximum period of delay. All it states is that any delay should be satisfactorily explained. A plausible and satisfactory explanation for delay is the key that unlocks the Court’s flow of discretionary power with the only caveat being that there has to be valid and clear reason upon which discretion can be favourably exercised.



- (ix) Failure to attach a draft memorandum of appeal is not fatal to an application under rule 4 of the Rules of the Court so long as there is demonstration through other processes relied upon by such an applicant that the intended appeal is arguable.
- (x) An arguable appeal is not one that must necessarily succeed but is one which ought to be argued fully before court;
- (xi) The right to a hearing is not only constitutionally entrenched, it is also the cornerstone of the rule of law.”

17. The Supreme Court of Kenya in the case of Nick Salat –v- Independent Electoral and Boundaries Commission & 7 Others (Application 16 of 2014) [2014] KESC 12 (KLR) state that;

“ ... it is incumbent on the Applicant for an extension of time to provide the court with a full, honest and acceptable explanation of the reasons for the delay. He cannot reasonably expect the discretion to be exercised in his favour, as a defaulter, unless he provides an explanation for the default.”

18. The applicants have explained that the delay in filing the appeal on time arose from the time it took to seek consultation and legal advice on the overall tenor and meaning of the 2014 judgement and that of 2025.

19. I find that the delay in filing the appeal has been fully explained, and the application is allowed.

20. In the end, the application is allowed in terms of prayers Nos b only . The costs shall be in favour of the 1st Respondent.

21. Orders accordingly

**DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 20<sup>TH</sup> DAY OF JANUARY 2026 VIA MICROSOFT TEAMS.**

**J G KEMEI**

**JUDGE**

Delivered online in the presence of;

Ms Wangari for the Appellant

Mr Musyimi HB for Mr Muhindi for the 1<sup>st</sup> Respondent

N/A for the 2<sup>nd</sup> Respondent

C/A – Ms. Yvette Njoroge

