



**Ngure v Njake (Environment and Land Miscellaneous Case  
E011 of 2025) [2026] KEELC 187 (KLR) (27 January 2026) (Ruling)**

Neutral citation: [2026] KEELC 187 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MURANGA  
ENVIRONMENT AND LAND MISCELLANEOUS CASE E011 OF 2025  
MN GICHERU, J  
JANUARY 27, 2026**

**BETWEEN**

**FLORENCE GITHINJI NGURE ..... APPLICANT**

**AND**

**FAITH WANJIKU NJAKE ..... RESPONDENT**

**RULING**

1. This ruling is on the notice of motion dated 9-6-2025. The motion is brought under Order 50 rule 6 Civil Procedure Rules, Section 95 of the [Civil Procedure Act](#) and all other enabling provisions of the law.
2. The motion seeks three main prayers.
  - a. Leave to file and serve appeal out of time.
  - b. Status quo to be maintained in suit property No. Loc. 15/Geitwa/215 until this appeal is heard and determined.
  - c. Any other order this Court may deem fit to grant.
3. The grounds for seeking the above orders are as follows. Firstly, judgment in the lower court case was delivered on 9-6-2023. Secondly, at the time of passing of the judgment the Applicant was unwell and had just lost her son and could not comprehend the outcome of the case. Thirdly, the delay in filing the appeal was not intentional but due to the above circumstances coupled with financial strain. Fourthly, the Applicant only seeks a chance to be heard and is ready to file and serve the appeal and abide by any conditions set out by the Court. In addition to the grounds, the motion is supported by an affidavit sworn by the Applicant dated 9-6-2025 which has six(6) annexures. For the above and other reasons, the Applicant prays for the orders.



4. The motion is opposed by the Respondent who has filed a replying affidavit dated 15-7-2024 in which she replies as follow. Firstly, the application is frivolous, vexatious and an abuse of the due process of law. Secondly, the reasons given for the delay of two(2) years before filing the application are not plausible because the alleged John Githinji Ngure died on 15-1-2021 which was long before the judgment of the 7-6-2023. Thirdly, the suit land Loc. 15/Geitwa/218 is no longer in the name of the Respondent having been transferred to Sarah Wanjiku Kihoro on 8-1-2025 as can be discerned from the copy of certificate of official search dated 5-5-2025. The suit land having been transferred to a third party, the application has therefore been overtaken by events.
5. In addition to the replying affidavit by the Respondent, her counsel has filed grounds of opposition as follows. Firstly, the application as filed by the firm of C.W. Macharia advocates offends the mandatory provisions of Order 9 rule 9 of the Civil Procedure Rules as the Appicant had previously been represented by the firm of M/s Karuga Wandai in the lower Court case up to the time of delivery of judgment on 7-6-2023. Secondly as already stated in the replying affidavit, the suit land has already been transferred to a third party and therefore overtaken by events. Finally, the application has been brought after a period of over two(2) years and this delay is inordinate.
6. In her written submissions dated 28-10-2025, the Applicant’s counsel did not address the issues raised by the Respondent’s counsel such as the Applicant’s son having died on 15-1-2021, the judgment being delivered on 7-6-2023 and this application being filed on 9-6-2025. Other issues not addressed include the motion being overtaken by events since the land has been transferred to a third party as well as failure to comply with Order 9 rule 9 Civil Procedure Rules by the law firm coming on record for the Applicant which did not represent her in the lower Court.
7. In his written submissions dated 17-9-2025, the Respondent’s counsel reiterated the issues raised in the grounds of opposition and the replying affidavit. It is therefore very surprising that the Applicant’s counsel failed to address those issues yet her written submissions were filed more than a month later.
8. I have carefully considered the motion in its entirety including the grounds, the affidavits as well as the written submissions by both sides. I find that the following issues arise for determination.
  - i. Whether Order 9 rule 9 of the Civil Procedure Rules applies in this case?
  - ii. Whether the application is overtaken by events?
  - iii. Whether a delay of over two years in filing this application is excusable.
9. Regarding the first issue, I find that Order 9 rule 9 of the Civil Procedure Rules does not apply to this case. It provides as follows.

“When there is a change of advocate, or when a party decides to act in person having previously engaged an advocate after judgment has been passed, such change or intention to act in person shall not be effected without an order of the court-

  - a. Upon an application with notice to all parties; or
  - b. Upon a consent filed between the outgoing advocate and the proposed incoming advocate or party intending to act in person as the case may”.

This miscellaneous application is a new matter altogether separate from civil suit No. 267 of 2015. It is not a continuation of the proceedings in the lower court but a commencement of new proceedings in another court. Order 9 rule 9 Civil Procedure Rules does not therefore apply.



10. On the second ground of the application having been overtaken by events, I find that it has not been overtaken since the suit land is land which is immovable property and this court has power to revoke any transfer or disposition of any land, then it cannot be said to have been overtaken by events.

11. As for the final issue, I find that the delay of over two years is not excusable for the following reasons. Firstly, the main reason given for failure to file the intended appeal on time is the death of the Applicant's son yet the death was more than 2 years before the date of judgment while the application itself is made more than 4 years after the death. The death was on 15-1-2021 while the current application was filed on 9-6-2025 which is almost 4 ½ years.

This delay is too inordinate and not well explained. In the case of Nicholas Kiptoo Arap Korir Salat vs. IEBC and 7 others [2014] eKRL, the Supreme court set out seven (7) guiding factors which the court should consider in an application such as this. They include one to the effect that the Applicant must give a reasonable and satisfactory explanation for the delay. In this case, the delay is not reasonable and the explanation given is not satisfactory. Another factor to be considered is prejudice to be suffered by the Respondent. In this case, there is evidence that the suit land has already been transferred to a third party. The said transfer occurred more than 1 ½ years from the date of judgement. This is a case where the Applicant has only herself to blame for failure to file the current application within reasonable time.

12. For the above stated reasons, I find no merit in the motion dated 9-6-2025 which I dismiss with costs to the Respondent.

It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT MURANG'A THIS 27<sup>TH</sup> DAY OF JANUARY, 2026.**

**M.N. GICHERU JUDGE.**

Delivered online in the presence of; -

Court Assistant – Jackline

Applicant's Counsel – Mr T.M. Njoroge

Respondent's Counsel – Mr Kirubi

