

**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT KAJIADO**

**MISCELLANEOUS APPLICATION NO. E072 OF 2025**

**(Arising from ELC Case No. 842 of 2017)**

**LENTEK SOKOIYAN ..... 1ST**

**APPLICANT SARAPIN SOKOIYAN ..... 2ND**

**APPLICANT**

**VERSUS**

**KAUSAI OLE KURENDE ..... 1ST RESPONDENT**

**LAND REGISTRAR KAJIADO ..... 2ND RESPONDENT**

**DISTRICT LAND SURVEYOR ..... 3RD RESPONDENT**

**RULING**

**Introduction**

1. The matter for determination is the **Notice of Motion application dated 30th October 2025**, brought pursuant to Orders 22 and 43 of the Civil Procedure Rules, Sections 3 and 3A of the Civil Procedure Act, the Constitution of Kenya 2010, and the Land Act.
2. By the said Application, the Applicants seek the following principal orders:
  - a) **Spent**
  - b) That the Applicants be granted leave to appeal out of time against the decision/report of the Land Registrar Kajiado dated 3rd December 2019 and filed in Court on 9th July 2019;
  - c) That there be a temporary stay of execution of the recommendations of the Land Registrar's report pending the hearing and determination of the application and the intended appeal;

d) That the status quo in respect of the current stay, occupation, and settlement of the properties formerly known as Kajiado/Olchoro-Onyore 68, 126, 282, 283 and others be maintained pending the hearing and determination of the intended appeal; and

e) Costs of the application.

3. The Application is supported by the Affidavit of the 1st Applicant, **LENTEK SOKOIYAN**, sworn on 30th October 2025. The gravamen of the Applicants' application is that the Respondents instituted **ELC Case No. 842 of 2017**, wherein directions were issued for the Land Registrar to visit the suit land and compile a report. The Applicants aver that they were never informed of the existence of the said report—dated 3rd December 2019—until 22nd October 2025, when this Court issued a ruling regarding jurisdiction.
4. The Applicants attribute the delay in filing the appeal to the failure of their former advocates to inform them of the report or the court proceedings. They contend that the statutory period of 30 days to launch an appeal had consequently lapsed without their knowledge.
5. Further, the Applicants depose that the implementation of the report is incapable of being effected as the land parcels referred to (formerly 68, 126, 282, and 283) do not exist on the ground in their original form. They state that the land has undergone several subdivisions, titles have been issued, and it is currently occupied by over 20,000 families. The Applicants argue that the report, if effected, would cause chaos and prejudice to residents who have lived on the land for over 50 years.
6. Consequently, the Applicants argue that this application is brought in the interest of justice to allow them an opportunity to be heard on appeal against the Land Registrar's report.

7. The Application is opposed by the 1st Respondent, **KAUSAU OLE KURENDE**, through a **Replying Affidavit sworn on 18th November 2025**. The 1st Respondent terms the application as fatally defective, frivolous, vexatious, and an abuse of the court process.
8. In response to the Applicants' claim of lack of knowledge, the 1st Respondent avers that the 1st Applicant, Lentek Sokoian, actively participated in the boundary determination exercise conducted by the Land Registrar and District Surveyor on **30th May 2019**. The Respondent deposes that the 1st Applicant not only attended the site visit but also presented his views, which were recorded in the final report. The Respondent therefore argues that it is disingenuous for the Applicants to claim they were unaware of the report, given their participation in the hearing and determination process.
9. The 1st Respondent clarifies that the boundary dispute in **ELC Case No. 842 of 2017** was referred to the Land Registrar by Hon. Lady Justice Ochieng on 23rd January 2018, as the Court had declined jurisdiction. The Respondent states that the Land Registrar's report was subsequently filed and received by the Court on **9th July 2020** (not 2019 as averred by the Applicants).
10. The 1st Respondent contends that the report has been validly in force for over five years and that the Applicants have been indolent in failing to challenge it within the statutory 30-days' period prescribed by the Land Registration (General) Regulations 2017. He argues that the application is brought in bad faith to delay the implementation of the report.
11. Finally, on the issue of prejudice, the 1st Respondent deposes that the lands in question belong to himself and the 1st Applicant, and asserts that any transfers to third parties were illegal, null, and void. He argues that granting the orders sought would cause him irreparable harm and prevent the 2nd and 3rd Respondents from executing their statutory mandate to place the correct beacons.

## **Directions**

12. The court directed that the application be canvassed by way of written submissions.

## **Analysis and Determination**

13. I have carefully considered the application, the affidavits on record, and the rival submissions by the parties. The singular issue for determination before this Court is whether the Applicants have satisfied the criteria for the grant of leave to file an appeal out of time against the decision/report of the Land Registrar.

14. The jurisdiction of this Court to extend time is derived from section 79G of the **Civil Procedure Act** which provides that:

*“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.”*

15. The provision is replicated verbatim under section 16A of the Environment and Land Court.

16. It is clear, therefore, that the decision whether or not to grant leave to appeal out of time is an exercise of judicial discretion. This discretion must be exercised on laid down principles and not on private opinions, sentiments, sympathy, or benevolence. It must be exercised deservedly and not arbitrarily, whimsically, or capriciously.

17. In exercising this discretion, I am guided by the principles set out in **Leo Sila Mutiso vs. Helen Wangari Mwangi [1999] 2 EA 231**, where the Court of Appeal established the primary factors to be considered as the length of the delay; the reason for the delay; the chances of the appeal succeeding (the arguability of the appeal); and the degree of prejudice to the Respondent.

18. I now proceed to apply these principles to the facts at hand.
19. The impugned decision by the Land Registrar is dated **3rd December 2019** and was filed in court on **9th July 2020**. The instant application was filed on **30th October 2025**. This constitutes a delay of over five years from the time the report was filed, and nearly six years from the date the decision was made by the Registrar. By any standard, a delay of five years is inordinate.
20. The Applicants bear the burden of explaining this inordinate delay to the satisfaction of the court. Their primary explanation is that their former advocates failed to inform them of the report or the court proceedings. However, the Replying Affidavit by the 1st Respondent indicates that the 1st Applicant actively participated in the boundary determination exercise on **30th May 2019**.
21. While the court may be sympathetic to a litigant let down by counsel, the law requires "**good and sufficient cause.**" As held in *Daphne Parry vs. Murray Alexander Carson [1963] EA 546*, though the provision for extension of time should receive a liberal construction, its interpretation must be in accordance with judicial principles when no negligence or inaction is imputed to the appellant.
22. In this case, the Applicants were aware of the site visit in 2019. To remain silent for five years without inquiring about the outcome of a process they participated in amounts to inaction and indolence. As held in **Daphne Parry (supra)**:
- “If the appellant had a good case on the merits but is out of time and has no valid excuse for the delay, the court must guard itself against the danger of being led away by sympathy, and the appeal should be dismissed as time-barred, even at the risk of injustice and hardship to the appellant.”***
23. The Applicants contend that their appeal is arguable because the ground situation has changed, with over 20,000 families allegedly occupying the land, rendering the report unimplementable.

As held in *Kenya Commercial Bank Limited vs. Nicholas Ombija [2009] eKLR*, an arguable appeal is not one which must necessarily succeed, but one which ought to be argued fully before the Court.

24. While the issue of mass occupation and the current status of the titles might raise an arguable point regarding the execution of the report, this factor alone cannot cure the defect of an inordinate, unexplained delay.
25. Litigation must come to an end. To reopen a matter settled in 2019/2020 would severely prejudice the Respondent who is entitled to the finality of the process. As noted in *First American Bank of Kenya Ltd vs. Gulab P Shah*, the Court must consider whether the Respondent can be adequately compensated in costs. Given the lapse of five years, costs may not be an adequate remedy for the anxiety and uncertainty imposed on the Respondent.
26. Considering the factors above, while the Applicants may have an arguable concern regarding the current status of the land, they have failed to surmount the hurdle of satisfactorily explaining the "length of delay" and "reason for delay." The delay of five years is excessive, and the blame piled upon former advocates is insufficient to explain away five years of inaction after participating in the initial boundary dispute determination.
27. Consequently, I find that the Applicants have not satisfied the Court that they have good and sufficient cause for not filing the appeal in time. The upshot is that the Notice of Motion dated 30th October 2025 lacks merit and is hereby dismissed with costs to the 1<sup>st</sup> Respondent.

It is so ordered.

**Dated Signed and Delivered at Kajiado Virtually this 29<sup>th</sup> Day of January 2026.**

**M.D. MWANGI  
JUDGE**

**In the virtual presence of:**

Mr. Nyang'au for the Applicants

Mr. Kuria h/b for Mr. Taliti for the 1<sup>st</sup> Respondent

N/A by the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents

Court Assistant: Mpoye

**M.D. MWANGI**  
**JUDGE**