



REPUBLIC OF KENYA



**KENYA LAW**  
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**Mahegere & 5 others v Marwa (Civil Application E150 of 2025)  
[2026] KECA 186 (KLR) (2 February 2026) (Ruling)**

Neutral citation: [2026] KECA 186 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT KISUMU  
CIVIL APPLICATION E150 OF 2025  
LK KIMARU, JA  
FEBRUARY 2, 2026**

**BETWEEN**

**DINA MAHEGERE ..... 1<sup>ST</sup> APPLICANT  
DAVID MAHEGERE ..... 2<sup>ND</sup> APPLICANT  
MATINDE JAMES MWITA ..... 3<sup>RD</sup> APPLICANT  
NCHAMA SIMEON MAHEGERE ..... 4<sup>TH</sup> APPLICANT  
ROBI JAMES ..... 5<sup>TH</sup> APPLICANT  
NCHAMA SIMEON MAHEGERE ..... 6<sup>TH</sup> APPLICANT**

**AND**

**ANDDR JOEL MAKENGE MARWA ..... RESPONDENT**

*(Being an application for extension of time to lodge the notice of appeal  
out of time from the Ruling of the Environment and Land Court of Kenya  
at Migori (M. Kullow, J dated 1st August, 2025 in ELC No. 380 of 2017)*

**RULING**

1. The applicants moved this Court substantially under Rule 4 of the Court of Appeal Rules seeking to be granted extension of time to appeal out of from the Ruling delivered on 1<sup>st</sup> August, 2025 by the Environment and Land Court (ELC) Court in Migori ELC No. 380 of 2017. The applicants gave the reason for their failure to lodge the appeal in time to be failure on the part of the Court to inform them of the date of delivery of the impugned Ruling. They only became aware of the same when they were served with a notice of taxation on 29<sup>th</sup> October, 2025. By that time, the period upon which they were required to lodge the notice of appeal had expired.



2. Immediately they became aware of this development, they filed the present application before this Court. The applicants insist that they have a good appeal which they should be allowed to ventilate before this Court. The respondent would not be prejudiced in the circumstances. The applicants are of the view that the reason they have given for the delay is excusable. They urged this Court to allow the application.
3. The application is opposed. Dr. Joel Makenge, the respondent, swore a replying affidavit in opposition to the application. He deponed that the reason given by the applicants for the delay in lodging the appeal in time was not plausible. This was because the applicants, who were by then acting in person, were fully seized of the conduct of the case. They cannot complain of not being made aware of the date the Ruling was delivered. The respondent was of the view that the application is based on falsehoods and half truths and made in bad faith and meant to deny him the opportunity to peacefully enjoy his proprietary rights. The respondent was not convinced that the applicants had an appeal that will likely see the light of the day. He urged the Court to disallow the application so as to prevent the applicants from abusing the due process of the Court.
4. This Court's jurisdiction under Rule 4 of the Court of Appeal Rules is hinged on the exercise of judicial discretion. This discretion, though unfettered, is circumscribed by principles which this Court is guided by. These principles include, the reason for delay, the length of delay, the arguability of the intended appeal and if the respondent will suffer any prejudice. (See Nicholas Kiptoo Arap Korir Salat v. IEBC & 7 others [2014] eKLR).
5. In the present application, the applicants gave the reason for delay to be failure by the ELC to inform them of the date the Ruling was delivered. The applicants state that they were not made aware of date the Ruling was delivered. They only became aware that an adverse Ruling had been made against them when they were served with the notice of taxation of the respondent's bill of costs. It was then that they immediately moved to this Court with the present application. The respondent does not explicitly deny the assertion made by the applicants that they were not informed of the date the impugned Ruling was delivered. No contrary evidence has been presented by the respondent to discredit the averment made by the applicants that the Ruling that is the subject of this application was delivered in their absence. The application has merit.
6. In the premises therefore, the application is allowed. The applicants are hereby granted leave to lodge the notice of appeal out of time. They shall file and serve the said notice of appeal within fourteen (14) days of today's date. There shall be no orders as to cost.

**DATED AND DELIVERED AT KISUMU THIS 2<sup>ND</sup> DAY OF FEBRUARY, 2026.**

**L. KIMARU**

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**JUDGE OF APPEAL**

I certify that this is a true copy of original.

Signed

**DEPUTY REGISTRAR.**

