



# THE JUDICIARY



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT MURANG'A**  
**ELCC NO E002 OF 2023**

DANSON MURIGI GITAU .....1<sup>ST</sup> DEFENDANT/RESPONDENT  
VERSUS  
AGRICULTURE FINANCE CORPORATION .....1<sup>ST</sup> DEFENDANT/RESPONDENT  
HEZRON MBUGUA .....2<sup>ND</sup> DEFENDANT/RESPONDENT  
DIGIT AUCTIONEERS .....3<sup>RD</sup> DEFENDANT/RESPONDENT  
MICHAEL KIGAYA NORU .....4<sup>TH</sup> DEFENDANT/RESPONDENT  
LAND REGISTRAR MURANG'A .....5<sup>TH</sup> DEFENDANT/RESPONDENT

## **RULING**

(1) This ruling is on the notice of motion dated 16-6-2025. The motion which is brought under **Section 9** of the Appellate Jurisdiction Act (Cap 9), **Orders 9 rule 9, 51 rules 1 and 3** of the **Civil Procedure Rules** and all other enabling provisions of the law seeks three orders.

the Originating Summons dated 11-3-2025, the Applicants seek the following orders.

2. **That the 3<sup>rd</sup> Respondent be granted leave to make a change of advocates from M/s Eurry S. Mabonga advocate to M/s Kinyua Njogu and Co. Advocates.**
3. **Extension of time for filing a notice of appeal by the 3<sup>rd</sup> Defendant against the judgment delivered on 3-10-2024.**
4. **Costs of this application be provided for.**

(2) The motion is based on eight (8) grounds and is supported by an affidavit sworn by Peter Waititu Waruinge who is the proprietor of Digit Auctioneers, the 3<sup>rd</sup> Defendant. The gist of the grounds and the affidavit is as follows. One, the 3<sup>rd</sup> Defendant's advocate on record was an in house advocate working with the 1<sup>st</sup> Defendant. Two, the Applicant has lost touch with the said advocate who no longer works with the 1<sup>st</sup> Defendant. He needs to be represented by an advocate and this can only happen if he is allowed to change his counsel as requested. Three, though judgment was delivered on 3-10-2024 the Applicant was not aware of this and it was not until in April 2025 that he learnt from the 4<sup>th</sup> Defendant of the judgment. Four, the

Applicant is aggrieved by the said judgment and desires to lodge an appeal. Finally, the mistake of the Applicant's counsel should not be visited upon him as he seeks to appeal. For the above and other reasons, he prays for the orders.

(3) The motion is opposed by the Plaintiff who has sworn a replying affidavit dated 8-7-2025 in which he responds as follows. Firstly, this court has no power to extend time to file a notice of appeal to the Court of Appeal. This Court became *functus officio* on 3-10-2024 after delivering the judgment herein. Secondly, there is no valid reason given by the Applicant for seeking to appeal eight(8) months after judgment. Thirdly, the current application is a replica of the continued connivance and corrupt schemes by the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendants to frustrate the Plaintiff who they defrauded off his land. This is the reason why the other Defendants are not opposed to the current motion. It is noteworthy that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants who were represented by the same counsel as the 3<sup>rd</sup> Defendant/Applicant did not file any notice of appeal. Fourthly, it is not enough for the Applicant to blame his counsel without him showing the tangible steps that he took in following up on his case. Fifthly, under **Article 159(2) (b) of the Constitution**, the **Civil Procedure Act** and the **Environment and Land Court Act**, justice shall not be delayed and it is the overriding objective of the two statutes that land disputes be resolved in a manner that is just, expeditious proportionate and affordable and filing this motion eight (8) months after delivery of judgment defeats the provisions of the Constitution and the law. Sixthly, it would occasion the Plaintiff a grave injustice if the motion were allowed because the Applicant has never paid any damages to the Applicant as ordered by the Court yet he is not in occupation of the suit land and the loan continues accruing interest. For the above and other reasons, the Plaintiff prays for the dismissal of the motion.

(4) The only submissions that I have seen on record are by the Applicant's counsel. They are dated 10-11-2025. The Plaintiffs' counsel seems not to have filed any written submissions.

(5) I have carefully considered the motion in its entirety including the grounds, the affidavits and the written submissions. The issues that arise are as follows.

- (i) **Does this court have jurisdiction to extend time for filling a notice of appeal to the Court of Appeal.**

- (ii) **What principles should the Court consider in exercising its discretion to extend time for filing an appeal.**

(6) Regarding the 1<sup>st</sup> issue, I find that this Court has power to extend time under **Section 7** of the **Appellate Jurisdiction Act (Cap 9)**. It provides as follows.

**“ The High Court may extend the time for giving notice of intention to appeal from the judgment of the High Court or for making an application for leave to appeal or for a certificate that the case is fit for appeal, notwithstanding that the time for giving such notice or making such appeal may have already expired.”**

(7) Secondly, as per the case of Nicholas Kiptoo Arap Korir Salat vs IEBC Application No. 16 of 2014, the Supreme Court of Kenya set out seven (7) principles to be considered in exercising discretion to extend time for filing an appeal. They include the following.

- (i) **Extension of time is not a right. It is an equitable remedy only available to a deserving party.**
- (ii) **A party seeking extension of time has the burden of laying a basis to the satisfaction of the Court.**
- (iii) **Whether the Court ought to exercise discretion to extend time is a consideration to be made on a case to case basis.**
- (iv) **Whether there was reasonable reason for delay, which ought to be explained to the satisfaction of the Court.**
- (v) **Whether there would be any prejudice suffered by the Respondents if the extension was granted.**
- (vi) **Whether the application has been brought without undue delay.**
- (vii) **Whether in certain cases, like election petitions, public interest ought to be considered before extending time.**

(8) Applying the above principles to this case, I find that the Applicant has offered an explanation for the delay that could well be true. There is an order of stay of execution of the decree which is already in place having been issued by the Court of Appeal on 5-6-2025. This means that the Respondent will not execute the decree even if this application is disallowed. He does not stand to suffer extra prejudice if this application is allowed. Given the above reasons, I find that it is fair in all the circumstances of this case to allow the notice

of motion dated 16-6-2025 which I hereby do in terms of prayer 3. Notice of appeal to be filed within **14 days**.

Costs in the cause.

**It is so ordered.**

**Dated, signed and Delivered virtually at Murang'a this 3<sup>rd</sup> day of February, 2026.**

**M.N. GICHERU  
JUDGE.**

**Delivered online in the presence of; -**

**Court Assistant – Njonjo**

**Plaintiffs' Counsel – Miss Muriithi**

**1<sup>st</sup> Defendant's Counsel – Miss Murungi**

**3<sup>rd</sup> Defendant's Counsel – Kinyua Njogu**

**4<sup>th</sup> Defendant's Counsel – Absent**

**2<sup>nd</sup> Defendant's Counsel – Absent**