

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT**  
**NANYUKI**  
**ELC MISC. NO. E008 OF 2025**

**TERESIAH**

**WAMBUI**

**KAMWARO.....APPLICANT**

**VERSUS**

**BEATRICE**

**WAIGWE**

**IRUNGU.....**

**RESPONDENT**

**JUDGMENT**

**1.** This miscellaneous suit was filed by way of a Notice of Motion Application dated 10.9.2025. The applicant who was the defendant before the trial court in the case Nanyuki CM's case no. E060 OF 2023 seeks the following orders; *Leave to appeal out of time, as well as a stay of execution of the judgment delivered in the above mentioned case on 9.8.2024.*

**2.** The applicant avers that she is a sister to James Gitahi Thaigwe, the owner of parcel LR No. Laikipia Ngobit Supuko Block 11 (Wiyumiririe) 213, which land he

developed and left it in the hands of the applicant. She avers that her brother's land is not L.R No. Laikipia Ngobit Supuko Block 2/ 210, yet in the judgment delivered before the trial court, an order was made for her eviction from parcel 210.

**3.** She further contends that she filed an application to set aside the aforementioned judgment, but the same was dismissed on 13.6.2025, hence the need to file an appeal. She avers that she stands to suffer substantial loss if the judgment of the trial court is executed, adding that her brother is old hence the delay in filing the appeal in good time.

**4.** In opposition thereof, the respondent filed a replying affidavit dated 10.11.2025 contending that a year has passed from the time the judgment was delivered and that no sufficient grounds have been proffered for seeking to appeal out of time, adding that, James Gitahi was not a party to the suit and that the applicant did not appeal against the ruling of 13.6.2025 within 30 days.

She also avers that the application to set aside the judgment was dated 13.12.2024.

5. The issue for determination is ***whether to grant leave to appeal out of time and to grant a stay of execution of the judgment delivered on 9.8.2024.***

The provisions of **Section 79G of the Civil Procedure Act** being the operative law in answering this question provides as follows:

**“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.....**

**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.”**

6. In **Peter Muriungi & another v Trustees, Registered Catholic Parish D.O.D Laare [2020] eKLR**, the Court of Appeal stated that;

**“It is now well settled that the decision whether or not to extend the time for appealing is essentially discretionary. It is also well settled that in general the matters which this Court takes into account in deciding whether to grant an extension of time are first the length of the delay secondly, the reason for the delay, thirdly (possibly) the chances of the appeal succeeding if the application is granted and fourthly, the degree of prejudice to the respondent if the application is granted”.**

**7.** In the case at hand, the judgment was delivered way back on 9.8.2024. The applicant attributes part of the delay to the filing of an application to set aside the said judgment, but was economical with the truth as to when she filed the said application. However, the respondent has stated that the said application is dated 13.12.2024, which means that the filing of that application could not

have been the reason for not filing the appeal within time.

**8.** Even after the aforementioned application was dismissed on 13.6.2025, the current application was only filed about three months later on 10.9.2025.

**9.** This far, I find that no sufficient cause has been proffered by the applicant as to why the appeal was not filed in good time.

**10.** Of great concern is the averment made by the respondent at paragraph 9 of the replying affidavit that in the application to set aside the judgment, the applicant did not avail a draft defence. In as much as this court is not dealing with the ruling of 13.6.2025, this court finds that it is a grave matter for the applicant not to have framed her claim in form of a draft pleading. In that regard chances of the appeal succeeding are narrow.

**11.** In the end, I find that this miscellaneous suit is not merited, the same is hereby dismissed with costs to the respondent.

**DATED, SIGNED AND DELIVERED AT NANYUKI THIS  
10<sup>TH</sup> DAY OF FEBRUARY 2026 THROUGH MICROSOFT  
TEAMS.**

**LUCY N. MBUGUA  
JUDGE**

**In the presence of:**

Mutahi holding brief for Mutembei for Respondent

CA: Nancy Mwangi