



**Laare Coffee Factory (Suing Through Chairman Lawrence M'mauta) v Kaberia (Substituted in Place of the Late John Kaberia M'ikirima - Deceased) & 4 others (Environment and Land Appeal E027 of 2023) [2026] KEELC 594 (KLR) (5 February 2026) (Ruling)**

Neutral citation: [2026] KEELC 594 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MERU  
ENVIRONMENT AND LAND APPEAL E027 OF 2023  
BM EBOSO, J  
FEBRUARY 5, 2026**

**BETWEEN**

**LAARE COFFEE FACTORY [SUING THROUGH CHAIRMAN LAWRENCE M'MAUTA] ..... APPELLANT**

**AND**

**JACKSON KIRIMI KABERIA [SUBSTITUTED IN PLACE OF THE LATE JOHN KABERIA M'IKIRIMA - DECEASED] ..... 1<sup>ST</sup> RESPONDENT**

**DISTRICT LAND ADJUDICATION & SETTLEMENT OFFICER, IGEMBE ..... 2<sup>ND</sup> RESPONDENT**

**DISTRICT LAND REGISTRAR, IGEMBE ..... 3<sup>RD</sup> RESPONDENT**

**THE HON ATTORNEY GENERAL ..... 4<sup>TH</sup> RESPONDENT**

**COUNTY GOVERNMENT OF MERU ..... 5<sup>TH</sup> RESPONDENT**

**RULING**

1. This appeal was lodged by Laare Coffee Factory, through Lawrence M'Mauta, on 19/4/2023. The appeal challenged the judgment of the Chief Magistrate Court at Maua [Hon Tito Gesora] rendered on 6/4/2023 in Maua CMC Civil Case No 221 of 2017. It was admitted for hearing on 5/5/2025. On the same day, the court directed the appellant to file and serve written submissions within 30 days. The respondents were directed to file and serve their submissions within 30 days upon receipts of the appellant's submissions. The appellant was availed the right of reply. The appeal was fixed for hearing on 29/7/2025. On 29/7/2025, the appellant and the 1st, 2nd, 3rd and 4th respondents confirmed filing and exchange of written submissions. The 5th respondent did not attend court on both occasions. The court fixed the matter for judgment on 6/10/2025.



2. On 23/9/2025, the 5th respondent [the County Government of Meru] filed a notice of motion of even date under the cover of a certificate of urgency, seeking: (i) an order arresting/staying delivery of judgment in the appeal; (ii) an order granting them leave to file a cross-appeal against the impugned judgment of the trial court; and (iii) orders admitting their draft memorandum of cross-appeal; their draft submissions on the cross-appeal; and their submissions on the main appeal. The said application is the subject of this ruling. The application was opposed by the 1st respondent, the late John Kaberia M'Ikirima, who is now represented by Jackson.
3. The application was premised on the grounds outlined in the motion and in the supporting affidavit and further affidavit sworn on 23/9/3035 and 3/10/2025, respectively, by Lucy Kaaria, the County Attorney of the County Government of Meru. It was canvassed through written submissions dated 13/10/2025, filed by M/s Makena Mbogo & Co. Advocates.
4. The case of the applicant [the County Government of Meru] is that it is the registered proprietor of land parcel number Ithima/Ntunene/1171 [parcel number 1171], which is a public land held in trust for the people of Meru County. Vide the impugned judgment, the trial court granted orders that affect the said land because it held that the said land had encroached into the 1st respondent's land, parcel number Ithima/Ntunene/11. It is aggrieved by the judgment and it wishes to lodge and ventilate its cross-appeal against the judgment. It also wishes to be heard on the main appeal.
5. The County Government adds that its failure to lodge an appeal or a cross-appeal promptly and its failure to file submissions in the main appeal were caused by administrative gaps in the previous administration, coupled with conflict of interest and mistake on part of the advocates who acted for it in the matter. The applicant states that the preceding administration did not have a substantive County Attorney, adding that the docket of Legal Affairs was headed by a County Executive Committee Member [the CECM] by the name Dickson Munene, who was also a partner at OMK Advocates. The applicant contends that the said CECM appointed his own law firm to act for the County Government in the matter, hence a conflict of interest which made it impossible for proper follow-ups to be done. The applicant adds that the frequent impeachment of the Governor contributed to the systemic administrative gaps during the currency of the previous administration. The scenario changed when the new administration came to office and a County Attorney was eventually appointed.
6. The applicant further argues that it has an arguable cross-appeal which deserves to be heard and determined on merits, pointing out that the exhibited draft memorandum of cross-appeal raises serious issues such as the 1st respondent's failure to amend the plaint to plead its claim against it in order to afford it an opportunity to file a defence to the claim and the trial court's reliance on a non-existent consent to issue a final judgment against it.
7. Citing various decided cases, the applicant argues that the interest of justice dictates that it be heard on the main appeal and on the cross-appeal, adding that none of the parties to the appeal will be prejudiced because they will all have an opportunity to be heard on the appeal and on the cross-appeal. Citing the Supreme Court of Kenya pronouncement in *Nicholas Kiptoo Arap Korir Salat v Independent Electoral and boundaries Commission & 7 others* [2014] eKLR to the effect that if public interest features in the matter, that fact should be taken into account when exercising discretion to enlarge time, the applicant urged the court to grant it leave to lodge a cross-appeal and to file submissions on the main appeal.
8. The appellant, and the 2nd, 3rd and 4th respondents did not oppose the application. Only the 1st respondent [John Kaberia M'Ikirima] opposed the application. The 1st respondent filed a replying affidavit dated 26/9/2025. They also filed written submissions dated 17/10/2025, through M/s Blayer & Co Advocates. The case of the 1st respondent is that the applicant was aware of the case in the lower



court but failed to participate in the case. He points out that the immediate former Governor was not in the office when the case was filed in 2017, hence the contention that the applicant's failure to file a cross-appeal and participate in the appeal is a flimsy excuse. Stating that justice delayed is justice denied, the 1st respondent argues that no plausible/reasonable explanation has been advanced by the applicant on why they did not file their cross-appeal and their submissions on time and why they failed to participate in the proceedings in the trial court.

9. The 1st respondent argues that the intended cross-appeal does not raise arguable issues because the trial court was clear on reinstatement of 0.66 acres hived off from parcel number Ithima/Ntunene/11 and added to Ithima/Ntunene/1711. He terms the application a delay tactic by the applicant and an abuse of the court process. He urges the court to dismiss the application.
10. The court has considered the application, the 1st respondent's response and the submissions tendered on the application. As pointed out, the appellant and the 2nd, 3rd and 4th respondents did not oppose the application. Only the 1st respondent opposed the application. At the time of bringing the application, this appeal had a reserved date for judgment. Due to the need to first hear and dispose the application, that date is now past. It therefore follows that, the plea for an order arresting delivery of judgment in the appeal is overtaken by events.
11. The two key issues that fall for determination in the application are:
  - (i) Whether the general criteria for enlarging time for complying with the directions of the court has been met; and
  - (ii) Whether the criteria for granting leave to a party to lodge a cross-appeal out of time has been met. I will be brief in my sequential analysis of the two issues.
12. As pointed out in one of the opening paragraphs of the ruling, directions on timelines for filing and service of submissions in this appeal were issued on 5/5/2025. Present in court on that day were Mr Omari for the appellant, Mr Nabende for the 1st respondent and Ms Wairimu for the 2nd, 3rd, and 4th respondent. The 5th respondent was not present. In his replying affidavit, the 1st respondent did not address the issue of service of the direction or the hearing notice on the 5th respondent. Suffice to state that the applicant prays for enlargement of the time within which to file its submissions.
13. This court's general jurisdiction to enlarge time for compliance with the orders or directions of the court is donated by Order 50 rule 6 of the Civil Procedure Rules which provides as follows:

“Where a limited time has been fixed for doing any act or taking any proceedings under these Rules, or by summary notice or by order of the court, the court shall have power to enlarge such time upon such terms (if any) as the justice of the case may require, and such enlargement may be ordered although the application for the same is not made until after the expiration of the time appointed or allowed:

Provided that the costs of any application to extend such time and of any order made thereon shall be borne by the parties making such application, unless the court orders otherwise.”
14. The prevailing jurisprudence on enlargement of time was outlined by the Supreme Court of Kenya in *Nicholas Kiptoo Arap Korir Salat v Independent Electoral and Boundaries Commission & 7 others* [2014] eKLR as follows:
  - “1. Extension of time was not a right of a party. It was an equitable remedy that was only available to a deserving party at the discretion of the court;



2. A party who sought extension of time had the burden of laying a basis for it to the satisfaction of the court;
  3. Whether the court ought to exercise the discretion to extend time, was a consideration to be made on a case to case basis;
  4. Whether there was a reasonable reason for the delay, which ought to be explained to the satisfaction of the court;
  5. Whether there would be any prejudice suffered by the respondents if the extension was granted;
  6. Whether the application had been brought without undue delay; and;
  7. Whether in certain cases, like election petitions, public interest ought to be a consideration for extending time.”
15. As pointed out, the 1st respondent opposed the application but did address key evidentiary aspects. For instance, he did not state the date when the appellant’s submissions and his own submissions were served on the applicant. The court cannot, therefore, conclusively make a finding to the effect that there has been inordinate delay on part of the applicant in filing submissions on the main appeal. All that is on record is that on 29/7/2025, counsel for the appellant informed the court that the County Government [the applicant] had not filed submissions. He did not, however, disclose the date when he served the County Government’s Advocates. If time is to be reckoned from 29/7/2025 to 23/9/2025 [the date of filing of the application], this translates to 55 days. Although a delay of 55 days is long, it is excusable if a proper reason for the delay is granted.
  16. The applicant has explained that there were systemic administration gaps in the County Government due to the governance instability which the County Government experienced between 2022 and early 2025 to the extent that the County Government did not have a County Attorney. The applicant has also pointed out that the County Government was unable to do a proper follow up due to a conflict of interest on the part of the CECM because he was the instructing client and at the same time the co-proprietor of the instructed law firm. The above explanation appears bonafide and has not been rebutted.
  17. On likely prejudice, the applicant has stated that it holds parcel number Ithima/Ntunene/1171 in trust for the people of Meru County. It stands the risk of losing 0.66 acres of what it calls public land if it is not heard on the main appeal and on the counterclaim.
  18. Taking the above into account, the court comes to the finding that the delay to file submissions within the timelines given by the court has been reasonably explained. Consequently, the court comes to the conclusion that the criteria for enlarging time under Order 50 rule 6 has been met.
  19. Does the application meet the criteria for granting a party to an appeal leave to file a cross-appeal out of time? Order 42 rule 32 of the Civil Procedure Rules contemplates the filing of a cross-appeal. It states thus:
 

“The court to which the appeal is preferred shall have power to pass any decree and make any order which ought to have been passed or made and to pass or make such further or other decree or order as the case may require, and this power may be exercised by the court notwithstanding that the appeal is as to part only of the decree and may be exercised in favour



of all or any of the respondents although such respondents may not have filed any appeal or cross-appeal.”

20. Section 16 of the *Environment and Land Court Act* and Section 79G of the *Civil Procedure Act* only provide the limitation period for filing a main appeal. The two statutes are, however, silent on the limitation period for lodging a cross-appeal within an existing appeal. I have researched extensively with a view to establishing if there is any binding pronouncement by the Supreme Court of Kenya or the Court of Appeal of Kenya on the limitation period for filing a cross-appeal. I have not come across any. The prevailing jurisprudence is by the third-tier superior courts.
21. Confronted by the above statutory lacuna, the High Court, in *Kenya Power & Lighting Co Ltd v Peter Langi Mwasi* [2018] KEHC 4833 (KLR), stated as follows:

“The above provisions however do not address the timelines within which a cross-appeal should be filed. Going by the record herein, the memorandum of appeal was filed on 8th July, 2014. If the applicant was desirous of filing a cross-appeal, he should have done so within reasonable time after he was served with the memorandum of appeal. If he fell outside the said timelines given to an appellant to file an appeal, he should have moved the court without inordinate delay to allow him to file a cross-appeal out of time.”
22. In *Christine Aloo v Mary Ouma* [2021] eKLR, the Court stated as follows:

“Whereas the timelines for filing of cross-appeal was not provided for in the Civil Procedure Rules, the same ought to be filed without any delay. In the mind of the court, the cross-appeal ought to be filed at least before directions under order 42 rule 11 of the Civil Procedure Rules have been given in the main appeal.”
23. What emerges from the above jurisprudence is that there is no legislated limitation period for filing a cross-appeal. Secondly, a party intending to file a cross-appeal should do so within reasonable time. If for one reason or another he fails to file his cross-appeal within reasonable time, he ought to apply for leave of the court seized of the main appeal to file his cross-appeal out of time.
24. In the application under consideration, there was delay in issuing directions in the appeal because the 1st respondent died. His estate brought an application dated 9/5/2024 seeking substitution. The application was disposed on 4/2/2025. Directions on the appeal were eventually given on 5/5/2025.
25. As pointed out, the party opposing the application for leave to file a cross-appeal did not bother to provide the court with evidence relating to the relevant aspects of proceedings such as the date of service of directions of the court on the applicant. Without that important evidence, the court cannot conclusively state that there has been inordinate and deliberate delay.
26. Secondly, the applicant has explained the cause of the delay and has exhibited the draft memorandum of appeal. The explanation has been accepted as reasonable. It does also emerge from the draft memorandum of appeal that the applicant has raised arguable issues that may require rebuttal submissions and a determination by the court.
27. Consequently, this court finds that the application under consideration meets the criteria for granting leave to a party to an appeal to file a cross-appeal out of time.
28. In light of the above findings, the application dated 23/9/2025 by the 5th respondent is allowed in the following terms: -



- a. The 5th respondent [the County Government of Meru] is granted leave to file a cross-appeal and to file submissions on the cross-appeal.
- b. The 5th respondent is, similarly, granted leave to file submissions on the main appeal.
- c. The cross-appeal and the 5th respondent's submissions on the two appeals shall be filed and served within 14 days from today.
- d. Costs of the application shall be in the cause.
- e. This matter shall be fixed for directions on a date to be issued at the time of rendering this ruling.

**DATED, SIGNED AND DELIVERED AT MERU THIS 5TH DAY OF FEBRUARY, 2026.**

**B M EBOSO [MR]**

**ELC JUDGE**

