

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MAKUENI
ELC APPEAL NO. E005 OF 2024

PHILIP MULI.....1ST APPELLANT
RACHEL MUMBUA KITAKA..... 2ND APPELLANT
MARTIN KIOKO..... 3RD
APPELLANT

-VERSUS-

ROBERT MULI MATOLO.....1ST
RESPONDENT
LAWRENCE MATOLO..... 2ND RESPONDENT

RULING

1. This is a ruling in respect of a notice of motion dated 5th June, 2025 in which the Appellant/Applicant seek the following orders:
 - 1) Spent
 - 2) Spent
 - 3) That the Applicants herein have failed to jointly secure the sum of security for costs and consequently the orders issued in the aforesaid judgment shall be executed, these orders being forceful eviction of the Appellant from suit property title number Makueni/Kivani/576.
 - 4) That the danger of lapse of stay execution of the judgment of the trial court is that the Applicants shall be evicted from their land where they have resided since the year 1998 and additionally the instant appeal ELC Appeal No. E005 of 2024 will be rendered nugatory.
2. The Applicants state that they were unable to raise the Kshs.100,000/= which the court ordered to raise within 30 days. They now want an extension of 30 days to do so.

3. The Applicants' application was opposed by the Respondents based on a replying affidavit sworn on 30th July, 2025. The Respondents contend that the application is frivolous, vexatious and devoid of merit and is based on an erroneous understanding of the law.
4. The Respondents state that there is no reasonable reason given why the Applicants were unable to raise the amount ordered and that they have not demonstrated what efforts they are making to raise the amount.
5. In a further affidavit sworn on 17th November, 2025, the Applicants state that they have only managed to raise Kshs.35,000/= and they are subsistence farmers who cannot afford to raise the amount given by the court. They have annexed a letter dated 12th November, 2025 from the chief of Kivani Location which shows that they may not raise the amount of Kshs.100,000/= required.
6. The parties were directed to file written submissions. The Applicants filed their submissions dated 17th November, 2025. The Respondents filed their submissions dated 30th September, 2025.
7. I have considered the Applicants' application as well as the opposition to the same by the Respondents. I have also considered the submissions by the parties. The only issue for determination is whether the Applicants have met the threshold for extension of time.
8. In the case of **Nicholas Kiptoo Arap Korir Salat –vs- The Independent Electoral and Boundaries Commission and others (2014) eKLR**, the Supreme Court set out the principles to be considered in considering whether to extend time or not.
 - a. **Extension of time is not a right of a party. It is an equitable remedy that is only available to a deserving party at the discretion of court.**
 - b. **A party who seeks for extension has the burden of laying a basis to the satisfaction of court.**

- c. **Whether the court should exercise the discretion to extend time, is a consideration to be made on a case to case basis.**
- d. **Where there is a reasonable delay, the delay should be explained to satisfaction of the court.**
- e. **Whether there will be any prejudice suffered by the respondents if the extension is granted.**
- f. **Whether the application has been brought under any undue delay.**
- g. **Whether in certain cases, like election petitions, public interests should be a consideration for extending time”.**

9. The ruling of the court was given on 5th May, 2025 whereby the Applicants were given 30 days to deposit Kshs.100,000/= as security for costs. Immediately after the lapse of 30 days, this application was filed in which the Applicants sought for extension of 30 days to comply. The Applicants have stated that they had challenges of jointly raising the amount required.

10. It is understandable that there may be challenges in raising money. As the application for extension of time was made promptly, I find that the Applicants deserve extension of time. I therefore extend the time of compliance with the order of 5th May, 2025 by 30 days from this date. The costs of this application shall abide the outcome of the appeal.

It is so ordered.

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HON. E. O. OBAGA

JUDGE

RULING DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS THIS 19TH DAY OF FEBRUARY, 2026.

IN THE PRESENCE OF:

Mr. Odoyo for Appellant/Applicant

Ms. Kyalo for Respondent

Court assistant – Steve Musyoki