



**M’Inibu v M’Auri (Environment and Land Miscellaneous Application
E002 of 2026) [2026] KEELC 853 (KLR) (12 February 2026) (Ruling)**

Neutral citation: [2026] KEELC 853 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E002 OF 2026
BM EBOSO, J
FEBRUARY 12, 2026**

BETWEEN

JULIUS MWETI M’INIBU APPLICANT

AND

SAMUEL MITHIKA M’AUIRI RESPONDENT

RULING

1. Through the notice of motion dated 8/1/2026, Julius Mweti M’Inibu [the applicant] seeks an order enlarging the time within which to lodge an appeal against the judgment of the Senior Resident Magistrate Court at Maua [Hon Ken Muchiri] dated 5/11/2025 in Maua CMC E & L Case No 3 of 2019. The said application is the subject of this ruling.
2. The application was premised on the grounds outlined in the motion and in the applicant’s supporting affidavit dated 8/2/2026. It was canvassed through brief oral submissions tendered in the virtual court by Ms Kerubo of Kiautha Arithi & Co Advocates. The case of the applicant is that, he was and he is still aggrieved by the above judgment. He was not supplied with copies of the judgment and the proceedings until 11/12/2025, hence he could not lodge an appeal within the prescribed limitation period of 30 days. He adds that the exhibited draft memorandum of appeal discloses arguable grounds of appeal.
3. The respondent opposed the application through grounds of opposition dated 23/1/2026 and oral submissions tendered in the virtual court by Ms Asuma of M/s Mutembei & Kimathi Advocates. He terms the application as scandalous, frivolous, vexatious and an abuse of the court process. He contends that there has been inordinate, inexcusable and unexplained delay in filing the application, adding that the exhibited draft memorandum of appeal does not disclose arguable grounds of appeal. The respondent argues that the issue of ownership of the suit land having been determined by the trial court without any challenge by the appellant, there is nothing more to be determined at the appellate stage.



4. The court has considered the application, the response to the application and the parties' respective oral submissions. The court has also considered the relevant legal frameworks and jurisprudence. The single issue falling for determination in the ruling is whether the application meets the criteria for enlarging time for filing an appeal in this court.
5. Both Section 16A (2) of the *Environment and Land Court Act* and Section 79G of the *Civil Procedure Act* vest in this Court jurisdiction to enlarge the limitation period for lodging an appeal to this Court. Both frameworks empower this court to enlarge time if the applicant satisfies the court that he had good and sufficient cause for not filing the appeal in time.
6. The general principles upon which our courts exercise jurisdiction to enlarge time were outlined by the Supreme Court of Kenya in *Nicholas Kiptoo Arap Korir Salat Vs. Independent Electoral and Boundaries Commission & 7 Others* [2014] eKLR as follows:
 1. 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 the Court;
 2. A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the court
 3. Whether the court should exercise the discretion to extend time, is a consideration to be made on a case to case basis;
 4. Whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the Court;
 5. Whether there will be any prejudice suffered by the respondents if the extension is granted;
 6. Whether the application has been brought without undue delay; and
 7. Whether in certain cases, like election petitions, public interest should be a consideration for extending time.
7. In *Mukora Mwangi v Charles Gichina – Civil Application No. Nai 255 of 1997*, the Court of Appeal summed up the relevant principles as follows:-

“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 enlargement 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.”
8. Both Section 16A of the *Environment and Land Court Act* and Section 79G of the *Civil Procedure Act* provide for a limitation period of 30 days within which to lodge an appeal in this court. The judgment which is the subject of the intended appeal was rendered on 5/11/2025. The 30-day limitation period lapsed on 5/12/2025. The application under consideration was filed on 14/1/2026. Consequently, there was a delay of 39 days. In my view, a delay of 39 days would be excusable if a proper explanation is tendered or if the circumstances of the case justify an extension.
9. The explanation tendered by the applicant is that he was not able to access the judgment and the proceedings of the trial court for the purpose of preparing and lodging an appeal. He accessed the said documents on 11/12/2025, which was outside the legislated limitation period of 30 days. The



applicant was, however, not able to explain his failure to file the application for enlargement of time immediately he obtained copies of the judgment and the proceedings on 11/12/2025. He filed the application on 14/1/2026.

10. Does the intended appeal disclose arguable grounds? The court has looked at the grounds of appeal. One of the key grounds of appeal relates to the trial court's alleged failure to appreciate that the applicant's evidence raised serious questions as to whether land parcel number Naathu/Naathu/10554 was surveyed out of Nathu/Nathu/81. On its face, this looks arguable. One can therefore properly say that, on its face, the exhibited draft memorandum of appeal contains an arguable ground of appeal.
11. On likely prejudice, the dispute giving rise to this appeal relates to ownership of land. The respondent sought and obtained a permanent injunction restraining the applicant against entering land that he alleges to have purchased from one Geoffrey Mugambi. If he is locked out of the appeal mechanism, he will be effectively dispossessed of the land that he claims to have purchased from one Geoffrey Mugambi.
12. Taking the foregoing into account, the court comes to the finding that there is a proper basis for enlarging time to enable the applicant ventilate his intended appeal. For failure to satisfactorily explain his default to file the appeal immediately after he obtained copies of the judgment and the proceedings on 11/12/2025, the applicant shall indemnify the respondent by paying him costs of this application, assessed at Kshs 20,000/=.
13. In the end, the application dated 8/1/2026 is allowed in the following terms:
 - a. The time for filing and serving an appeal against the judgment of the trial court in Maua CMC E & L Case No 3 of 2019 is hereby enlarged by 10 days from today.
 - b. The applicant shall pay to the respondent's advocates Kshs 20,000 as costs of this application within 30 days. In default, the order enlarging time shall stand vacated and any appeal filed pursuant to the order shall stand struck out.
 - c. This miscellaneous case shall be marked "case closed".

DATED, SIGNED AND DELIVERED AT MERU THIS 12TH DAY OF FEBRUARY, 2026.

B M EBOSO [MR]

ELC JUDGE

