



M’Guima v M’Imemba & another; Ikiburu (Interested Party) (Environment and Land Miscellaneous Application E042 of 2025) [2026] KEELC 612 (KLR) (4 February 2026) (Ruling)

Neutral citation: [2026] KEELC 612 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E042 OF 2025
BM EBOSO, J
FEBRUARY 4, 2026**

BETWEEN

BENSON KUNGUTIA M’GUIMA APPLICANT

AND

ALOICE M’MEMBA 1ST RESPONDENT

JULIUS KIMATHI KAUNYANGI 2ND RESPONDENT

AND

KALIUNGA IKIBURU INTERESTED PARTY

RULING

1. Falling for determination in this ruling is the notice of motion dated 19/8/2025, brought by Benson Kungutia M’Guima [the applicant]. Through it, the applicant seeks: (i) leave to file an appeal out of time against the post-judgment ruling delivered on 14/8/2024 in Maua CMC E & L Case No 35 of 2018; (ii) an order directing that Maua CMC E & L Case No 35 of 2018 be re-opened and be re-heard; (iii) an order restraining the Sub-County Surveyor against identifying, marking and establishing boundaries of land parcel number Kiegoi/Kinyanka/2805, 2806, 2807, 2808 and 2809 which were surveyed out of Kiegoi/Kinyanka/2249, pending the hearing and determination of the intended appeal; (iv) an order of inhibition relating to Kiegoi/Kinyanka/2249, 2805, 2806, 2807, 2808 and 2809; (v) orders directing service of the above orders on the Officer Commanding Maua Police Station, the Sub County Surveyor and the Land Registrar, for compliance and implementation; and (vi) an order providing for costs of the application/suit. The application was premised on the grounds set out on the face of the motion and in the applicant’s undated affidavit and his supplementary affidavit dated 2/12/2025.
2. The case of the applicant is that, judgment in Maua CMC E & L Case No 35 of 2018 was rendered by the trial court on 8/1/2020 and he [the applicant] was decreed to refund to the 1st respondent the



consideration/purchase price paid to him, together with interest and the agreed liquidated damages. He was also ordered to bear costs of the suit and interest. Being illiterate, he did not pursue the matter further. He was never served with any other court documents thereafter. In 2024, he received an eviction order granted by the trial court on 14/8/2024. He contends that he was never served with the judgment, decree, certificate of costs, application for warrants of attachment, attachment orders, notification of sale, notice of eviction, application for eviction or any other document. He adds that the respondents and the interested party connived and engaged Michael Ngunjiri Advocate who acted for him yet he did not instruct him.

3. It is the case of the applicant that he was not granted an opportunity to be heard on any application for attachment of his property or on any application for sub-division or transfer of his land in execution of the decree of the lower court.
4. The applicant adds that, in August 2024, he filed an application dated 29/8/2024 inviting the trial court to set aside the ex-parte judgment rendered on 8/1/2020 on the ground that he was not served with pleadings and hearing notices. The trial court considered his application and disposed it through a ruling rendered on 9/4/2025. The trial court rejected his plea. Consequently, he seeks an order enlarging the time for lodging an appeal against the order of 14/8/2024 [not the ruling of 9/4/2025] that authorized his eviction in execution of the decree of the trial court.
5. The respondents opposed the application through a replying affidavit sworn on 2/10/2025 by Julius Kimathi Kaunyangi and submissions dated 20/10/2025, filed by M/s Thangicia M David & Co Advocates. The case of the respondents is that the application is frivolous, defective and an abuse of the process of the court. They point out that the applicant was served with summons and suit papers and he attended court severally and asked to be granted time to file a defence but he elected not to file one. They state that the applicant was served with relevant hearing notices, adding that on 8/1/2020, when the trial court rendered its judgment, the applicant was present in court and elected to do nothing until August 2024 when he filed an application seeking an order setting aside the judgment of the trial court. They further point out that the applicant has admitted in his supporting affidavit that he chose not to pursue the matter after the trial court rendered its judgment on 8/1/2020.
6. The respondents further point out that in the preceding application in the trial court, dated 29/8/2024, the applicant admitted that he was served with a proclamation notice way back in 2023, hence his allegation that he was not aware of the attachment is false. They add that since 8/1/2020 when the judgment was rendered in the presence of the applicant, he did not make any attempt to honour the judgment. The respondents further point out that the applicant has not offered any security for the due performance of the decree.
7. The interested party filed a replying affidavit dated 2/10/2025 and a further affidavit dated 4/12/2025. He adopted the averments in the respondents' replying affidavit and termed the application as frivolous, malicious, and an abuse of the court process. His case is that he purchased the suit property at a court sanctioned public auction conducted by M/s Bealine Auctioneers.
8. The court has considered the application, the responses to the application, and the parties' respective submissions. The court has also considered the relevant legal frameworks and jurisprudence. The following are the key issues that fall for determination in this ruling: (i) Whether the application meets the criteria for enlargement of time for lodging an appeal in this court; (ii) Whether the application meets the criteria for granting of an order of stay of execution pending the disposal of an appeal of this court; and (iii) Whether the substantive and final orders sought in the application dated 19/8/2025 are available on the platform of this miscellaneous application. I will be brief in my analysis and disposal



of the three issues. It is important to outline the contextual background to the application before analyzing the issues.

9. The suit in the trial court was filed in 2018. Upon trial, the lower court rendered its judgment on 8/1/2020. The applicant has conceded in this application that he was aware of the judgment but did nothing about it because he was illiterate. The judgment of the lower court was subsequently executed through attachment and sale of the applicant's land by public auction to recover the decretal sum. Upon sale and registration of the land in the name of the purchaser [the interested party], a post-judgment application was made for removal/eviction of the applicant/judgment-debtor from the suit land. The application was granted vide an order issued on 14/8/2024. The applicant seeks an order enlarging the time for lodging an appeal against the said order of 14/8/2024.
10. It also does emerge from the record that in August 2024, the applicant filed an application seeking an order setting aside the judgment of the trial court. The application was rejected vide the trial court's ruling dated 9/4/2025. The applicant did not challenge the judgment of the lower court through the appeal mechanism. He did not challenge the subsequent ruling of 9/14/2025 through the appeal mechanism. He, however, seeks to challenge the order of 14/8/23024 if he is granted a time enlargement order.
11. Does the application satisfy the criteria for enlargement of time for lodging an appeal in this court? The limitation period for lodging an appeal in this court is defined under Section 16A of the *Environment and Land Court Act*. It is also defined under Section 79G of the *Civil Procedure Act*. Both statutes provide for a limitation period of 30 days from the date when the impugned decision is rendered. Both statutes enjoin this court to exercise the discretionary jurisdiction only when the applicant has demonstrated good and sufficient cause for not filing the appeal on time.
12. The general jurisprudential principles that guide our courts whenever invited to exercise the above jurisdiction were outlined by the Supreme Court of Kenya in the case of 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.”



13. In *Mukora Mwangi v Charles Gichina* – Civil Application No. Nai 255 of 1997, the Court of Appeal summed up the following relevant principle:

“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.”

14. In the present application, the intended appeal will be challenging post-judgment orders of the trial court made on 14/8/2024. The impugned orders are part of enforcement orders that enjoined the Officer Commanding Maua Police Station to enforce the decree of the trial court. The judgment of the trial court was rendered on 8/1/2020 in the presence of the applicant. For more than five (5) years, the applicant elected to do nothing about the judgment. He neither appealed against the judgment nor applied to have it set aside.
15. When it dawned on the applicant that the decree of the trial court had been executed and the auctioneer and the Police had been authorized to have him removed/evicted from the suit land, he filed an application dated 29/8/2024 inviting the trial court to set aside the judgment that had been rendered in his presence on 8/1/2020. The trial court considered the application and rendered a ruling on 9/4/2025 in which it held that the application lacked merit. The trial court noted that the applicant had on several occasions attended court proceedings and had at one point sought and was granted 15 days within which to file a defence but he elected not to do so.
16. On losing the plea for an order setting aside the judgment, the applicant elected to do nothing about the ruling of 9/4/2025 which had rejected his plea for setting aside orders. He came to this court seeking an order enlarging the time for lodging an appeal against the order of 14/8/2024 which, in essence, merely authorized the Officer Commanding Station and the auctioneer to carry out the eviction at the tail end of the execution process. It was at the tail end because the applicant’s land had already been attached and sold to recover the decretal sum.
17. The only explanation which the applicant tendered to account for the inordinate delay of one year is found in paragraphs 14 and 15 of his undated affidavit which read as follows: -

“ 14. That reason for the delayed filing of the appeal has been that the respondents have been proceeding with the matter without serving the process on me and after making copies of the pleadings, it seems that they have all along been serving the same on Ngunjiri Michael Advocates. (Annexed hereto and marked as exhibit “BKM-6” is a copy of the said application).

15. That I therefore could not proceed with any process of appealing without being issued with the aforesaid eviction orders and most recently on 12th August 2025 was served with a letter from the County Surveyor dated 6th August 2025. Upon service on 14th August 2025 instructed my advocates on record to file an appeal. (Annexed hereto and marked as exhibit “BKM-7” is a copy of the said letter)”.

18. The court has considered the above explanation. The applicant was aware of the order of 14/8/2024 in August 2024. It is the order of 14/8/2024 that prompted the applicant to file the application dated 29/8/2024 seeking an order setting aside the judgment of the trial court, which he lost. There is no



legitimate reason why he failed to lodge an appeal in time to challenge the order of 14/8/2024 if indeed that was the proper recourse available to him. It is therefore clear that there has been inordinate and unexplained delay.

19. What are the chances of the appeal succeeding? The judgment of the trial court was not challenged through an appeal. The ruling of 9/4/2025 through which the trial court rejected the applicant's plea for an order setting aside the judgment is not the subject of the intended appeal. This means that the judgment of the trial court remains unchallenged. The applicant has not explained why he never bothered to settle the decree that is more than 6 years old. The decree arose from a failed sale where the applicant received purchase price but failed to convey the sold land to the 1st respondent. The 1st respondent was granted his alternative plea which was a refund of the purchase price which he had paid to the applicant. In the above circumstances, I cannot say that the applicant has demonstrated that his intended appeal has arguable grounds of appeal.
20. Consequently, it is the finding of this court that the application under consideration does not meet the criteria for enlargement of time for lodging an appeal in this court.
21. The plea for leave to file an appeal out of time having failed, there is no proper basis for granting an interlocutory order of stay of execution. It is, therefore, the finding of this court that the application under consideration does not meet the criteria for granting an order of stay of execution pending the hearing and disposal of an appeal.
22. Prayers 4 and 6 were not pegged on the intended appeal. They are substantive and final orders. What is before this court is a miscellaneous application in which the applicant essentially seeks leave to initiate an appeal out of time. The miscellaneous application is not the proper platform on which to canvass for the above final and substantive orders. That is the finding of the court on the third issue.
23. In the end, in light of the above findings, the application dated 19/8/2025 is rejected and dismissed with costs for lack of merit.

DATED, SIGNED AND DELIVERED AT MERU THIS 4TH DAY OF FEBRUARY, 2026.

B M EBOSO [MR]

ELC JUDGE

