

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KAJIADO

ELCLA E066/2025

LONKISA OLE MUSHENEAPPELLANT

VERSUS

EDWARD JAMES KARUNGU..... 1ST
RESPONDENT

CHARLES THUO KARUNGUS{being sued as –

personal representative of the estate of -

Henry Mwaniki Karumgu(deceased)2ND
RESPONDENT

CHIEF LAND REGISTRAR, KAJIADO NORTH.....3RD
RESPONDENT

BENSON MATIAS KUYATEI..... 4TH
RESPONDENT

EZEKIEL FUKWO WAFULA5TH
RESPONDENT

DAVID RIGICHA NGANGA.6TH
RESPONDENT

RULING

{In Respect of the Appellant N.O.M dated 29th October,2025 seeking leave to file Appeal out of time}_

Introduction

1. This Ruling is in respect of the Appellant Notice of Motion dated 29 October,2025 which is brought under Article 159(2)(d) of the Constitution, Section 95 of the Civil Procedure Act and Order 50 Rule 5 of the Civil Procedure Rules,2010.The Applicant seeks for orders that

(a) This Honorable court be pleased to grant leave to the Applicant to file an appeal out of time.

(b) Upon grant of leave, the annexed memorandum of Appeal be deemed as duly filed upon payment of requisite court fees.

(c) Costs of the Application being in the cause.

2. The Application which is premised on grounds set out in the Motion is supported by the Affidavit of Lonkisa Ole Mushene sworn on 29 October,2025. The Applicant avers that on 27 May,2025, his counsel filed a Memorandum of Appeal and an Application for stay of execution dated 26 May,2025 in Kajiado High Court HCCA/E075/2025 for he was dissatisfied with the lower court judgment delivered on 20 May,2025 in Kajiado ELC 61 of 2019. Additionally, on 26 May,2025, his counsel received certified copies of proceedings, decree and judgment after requesting them on 18 June,2025.
3. According to the Appellant, his counsel withdrew the matter before the High Court because its jurisdiction to determine the matter was challenged by Counsel for the 1st and 2nd Respondents when the matter came up for directions on 10 July,2025. It is contended that although the Applicant subsequent Appeal ELCLA/E042/2025 was filed before this court on 14 July,2025 due to technical hitches with CTS, the same was summarily dismissed on 29 October,2025. This was based on the courts directive that an Application be filed seeking to admit the Appeal out of time.
4. The Appellant beseeches the court not to punish him due to his counsels' inadvertent mistake of lodging the Appeal outside the stipulated timelines

because the delay was not deliberate but was occasioned by circumstances beyond his control. Given the Appeal raises serious factual and legal questions which needs to be determined on merit, the Applicant avows that he is keen in pursuing his claim against the lower court judgment.

The 1st and 2nd Respondents Case

5. The 1st and 2nd Respondents opposes the Application through the Replying Affidavits of Edward James Karungu and Charles Thuo Karungu sworn on 8 December,2025. The Deponents asserts that the Appellant opted to file an application before the High Court seeking stay of the lower court's judgment rather than an Appeal against it, yet the court had granted him leave to file an appeal within 30 days if he so wished. Following the dismissal of the Application by the High Court for want of justification, the Appellant sequent appeal ELCLA/E042/2025 instituted before this court was summarily dismissed because it was irregularly filed.
6. The Deponents asserts that the Appellant cannot feign ignorance yet all through he was represented by counsel. It is alleged if the Applicant was serious on pursuing the Appeal, he ought to have filed the Appeal in the right court and within the correct time. According to the 1st and 2nd Respondents, the 5 months delay period within which the Appellant seeks to lodge the

Appeal out of time is not excusable for it has not been explained. Further, counsel mistakes are not an excusable indolent delay where strict prescribed rules of procedure need to be complied with. Consequently, the 1st and 2nd Respondents prays that the Application be dismissed with costs for it has not met the threshold of the orders sought. The 1st and 2nd Respondents alleges that if the Application is allowed, they shall be prejudiced from enjoying the fruits of their judgment.

Appellant Further Affidavit

7. The Appellant reply to the 1st and 2nd Respondents averments is contained in her further Affidavit sworn on 10 December,2025 which echoes the averments of his claim by acknowledging that he filed an application for stay of execution of the lower court decision before the High Court. It is further contended that the delay in lodging the Appeal ELCLA/E042/2025 before this court 56 days after delivery of the lower court's judgment was caused by delaying in obtaining courts proceedings as well as technical issues with CTS. Afterwards, ELCLA/E042/2025 instituted before this court closed on 30 September,2025 for it was filed outside the 30 days statutory timelines.

8. Premised on the above averments, the Appellant beseeches the court to exercise its discretion and issue the prayers sought since the Appeal raises arguable issues. The Appellant decries that failure to issue the orders will defeat ends of justice for he will suffer substantial and irreparable prejudice. According to the Appellant, the Respondents will not be prejudiced for they will have a chance to respond to the Appeal.

Courts directions

9. The Application was disposed through written submission. The Appellant complied with this directive by filing submissions dated 18 December, 2025 in support of the Applicant. Even though the 1st and 2nd Respondents Counsel never filed any submission as directed by the Court, I shall proceed to determine the Application in absence of their submissions.

Issue for determination

10. The only issue for determination upon careful analysis of the Appellant Application, submission as well rebuttal by the 1st and 2nd Respondents through their Affidavits is *whether the Appellant can be granted leave to lodge an Appeal out of time against the judgment and decree of Hon.*

Roseline A. Oganyo (CM) delivered on 20 May,2025 in Kajiado Magistrate Courts MC. ELC 61 of 2019.

Determination

11. Section 95 of the Civil Procedure Act (Cap. 21) and Order 50 Rule 6 of the Civil Procedure Rules upon which the Application is premised on grants this court unfettered discretion to extend time within which a specific action legally required to be undertaken was not done. According to Section 16A (2) of Environment and Land Court Act (Cap. 8D), an appeal before the Environment and Land Court can be admitted out of time if a party demonstrates that failure to file the Appeal within the stipulated timelines was occasioned by sufficient cause.

12. In *Salat v Independent Electoral and Boundaries Commission & 7 others [2014] KESC 12 (KLR)*, the Supreme Court set out guiding principles which courts ought to take into consideration while exercising their discretion to extend time by holding as follows

“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; A party who seeks for extension of time has the burden of laying a basis to

the satisfaction of the court. Whether the court should exercise the discretion to extend time, is a consideration to be made on a case to case basis; Whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the court; Whether there will be any prejudice suffered by the respondents if the extension is granted; Whether the application has been brought without undue delay; and Whether in certain cases, like election petitions, public interest should be a consideration for extending time.”

13. The Appellant contends that what caused inordinate delay in filing this Appeal out of time against the judgment of the lower court delivered on 20 May, 2025 was withdrawal of his previous Appeal before the High Court, CTS technical hitches and summary dismissal of his subsequent Appeal instituted before this court. Even though the Appellant alleges that the delay in lodging his Appeal was attributed to external factors referred to aforesaid factors, he has not annexed the entire record of Appeal in support of his Application. Instead, to support his Application, he has annexed a letter seeking to be supplied with trial court proceedings; two pages of incomplete trial court proceedings undertaken on 25 March, 2025 and 21 May, 2025,

the decree; first and last of lower court's judgment, draft memorandum of Appeal; and statement of CTS system outrage.

14. It is not contested that the Applicant was issued with the lower court judgment as deponed in his Affidavit. Regardless, this court wonders why he opted not to annex the unabridged judgment and proceedings of the lower court yet he alleges that the Appeal raises arguable issues. The important of a complete record of Appeal on adjudication of Appeal proceedings was highlighted by the Supreme Court in Bwana v Bonaya & 2 others [2015] KESC 8 (KLR) by holding as follows

“Without a record of appeal a Court cannot determine the appeal cause before it. Thus, if the requisite bundle of documents is omitted, the appeal is incompetent and defective, for failing the requirements of the law. A Court cannot exercise its adjudicatory powers conferred by law, or the Constitution, where an appeal is incompetent. An incompetent appeal divests a Court of the jurisdiction to consider factual or legal controversies embodied in the relevant issues.

15. Further Order 42 Rules 13 (4) of the Civil Procedure Rules stipulates that an Appeal cannot proceed unless the following documentation are contained in

courts record. They include the memorandum of appeal; pleadings; the notes of the trial magistrate made at the hearing; the transcript of any official shorthand, typist notes electronic recording or palantypist notes made at the hearing; all affidavits, maps and other documents whatsoever put in evidence before the magistrate; the judgment, order or decree appealed from, and, where appropriate, the order (if any) giving leave to appeal. (emphasis).The components of a comprehensive record of Appeal are further restated in Practice Directions No. 14 of Practice Directions to Standardise Practice and Procedures in the Environment and Land Court, 2025 issued by the Chief Justice through Gazette Notice No. 3461 of 2025.

16. Given the Applicant has not complied with the basic procedural rules with respect to the record of Appeal, the court is not in position to determine of the intended Appeal raises any arguable factual and legal issues. Consequently, I find that the Application is unmerited and proceed to struck it out with costs.

17.It is so ordered.

Dated Signed and Delivered at Kajiado Virtually this 19th Day of February 2026.

M.D. MWANGI
JUDGE

In the virtual presence of:

M/S. Mwangi holding brief for Mr. Nzaku for the 1st and 2nd respondent

No appearance by the applicant and 3rd – 6th respondents

Court assistant - Mpoye

M.D. MWANGI
JUDGE

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