

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT KISII
ELCLMISC NO. E025 OF 2025

FLORENCE BONARERI NGARE APPLICANT

VERSUS

PASCALIA ORIKI RESPONDENT

RULING

1. The application before me is that dated 1 October 2025. It seeks leave to appeal out of time against the judgment delivered on 9 December 2024 in the suit Kisii MCELC No. 24 of 2020. The application is supported by the affidavit of the applicant. She deposes that the judgment was delivered without notice to her advocate. She avers that the matter was to be mentioned in September 2024 but the trial Magistrate had been transferred and she was informed by her counsel that the file will be sent to the trial Magistrate to write the judgment, which was done. On 2 December 2024 she visited her advocate to find out if the judgment had been delivered and her advocate informed her that he had not received any date for delivery of the judgment. Her advocate then wrote a letter of even date to inquire about the date of delivery of the judgment which letter she annexed to her affidavit. She avers that no response was received and her advocate was never informed of the date of delivery of the judgment hence the delay in preferring the appeal.
2. The respondent has filed a replying affidavit to oppose the motion. She deposes that the judgment was uploaded to the Court Tracking System (CTS) on 9 December 2025 and that her counsel and the applicant's counsel had access to the system. She also deposes that there is no proof that the letter dated 2 December 2024 was ever delivered to court. She adds that the delay from the time of delivery of the judgment to the time that the application was filed on 1 October 2025 is inordinate. She avers that she has already commenced execution of the judgment in having the suit land transferred to her and has also started construction on the disputed land hence allowing the application will disrupt this and cause her substantial loss.
3. The application was argued through written submissions and I have taken note of the submissions filed.
4. Section 79G of the Civil Procedure Act, Cap 21, Laws of Kenya, requires that appeals be filed within 30 days though there is a proviso for allowing an appeal to be admitted out of time if good and sufficient cause is shown. That section is drawn as follows :

79G. Time for filing appeals from subordinate courts

Every appeal from a subordinate court to the High Court shall be filed within a period of thirty days from the date of the decree or order appealed against, excluding from such period any time which the lower court may certify as having been requisite for the preparation and delivery to the appellant of a copy of the decree or order:

Provided that an appeal may be admitted out of time if the appellant satisfies the court that he had good and sufficient cause for not filing the appeal in time.

5. In our case the applicant avers that she could not file the appeal within time because she was not notified of the delivery of the judgment.
6. I have no evidence to show that the trial Magistrate informed the parties or their counsel of when the judgment was going to be delivered. It is also not disputed that the trial Magistrate had proceeded on transfer and was no longer in the station. Although the respondent avers that the judgment was uploaded and counsel had access to the system, I think it was necessary for the trial Magistrate to inform the parties, through their counsel on record, of when the judgment would be delivered. Simply uploading a judgment with no notice to the parties in my opinion is not good practice. Good practice entails that parties and/or their advocates be informed of when a judgment will be delivered. It is not fair to leave it to chance that parties will somehow stumble upon the judgment in good time for them to act as they would wish pursuant thereto. I am persuaded that the failure to give notice for the delivery of the judgment is good and sufficient reason for not filing the appeal within time.
7. I am thus prepared to allow this application and I hereby allow it. I grant leave to the applicant to file her appeal out of time. I further direct that the appeal be filed and be served within the next 14 days. In default, this leave to appeal will lapse.
8. I make no orders as to costs.
9. Orders accordingly.

DATED AND DELIVERED THIS 19 DAY OF FEBRUARY 2026

JUSTICE MUNYAO SILA
JUDGE, ENVIRONMENT AND LAND COURT
AT KISII

Delivered in the presence of :

Ms. Omusi for the respondent

No appearance on part of M/s Mose & Mose Advocates for the applicant

Court Assistant – Michael Oyuko