

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT
BUNGOMA

ELC LAND MISC. APPLICATION NO. E036 OF 2025

SOLOMON KITUYI WAFULA.....1ST
PLAINTIFF ANDREW KHAEMBA.....
.....2ND PLAINTIFF
ALICE NELIMA SIMIYU.....3RD
PLAINTIFF

VERSUS

GILBERT LUKORITO MAKAWA.....
DEFENDANT

RULING

Through the application dated 13/10/2025, the Applicant seek leave to appeal against the judgment delivered on 24/7/2025 in Bungoma CMCC No. 128 of 2005 out of time. The application was made on the grounds that the judgment was delivered in the absence of and without notice to the Applicants and that they became aware of the judgment when they were served with the bill of costs on 8/10/2025. Being dissatisfied with the decision of the trial court, they wish to appeal but the time for lodging an appeal had expired. They contended that they had an arguable appeal.

The application was supported by the affidavits of David Were Advocate and Andrew Khaemba sworn on 13/10/2025. Mr. Were deponed that he represented the Applicants in Bungoma CMCC No. 128 of 2005 and that the judgment was delivered in his absence. On being served the bill of costs on 8/10/2025, he perused the court file and noted that judgment was delivered ex-parte on 24/7/2025. Mr. Khaemba's affidavit contained more or less similar averments. Mr. Were exhibited a copy of the judgment, bill of costs and draft memorandum of appeal.

The Respondent swore the replying affidavit opposing the application for leave to appeal out of time. He deponed that the Applicants have been indolent and that there was inordinate delay in filing the application. Further, that the Applicants have employed delaying tactics and to support this, the Respondent annexed a ruling in Bungoma High Court Civil Appeal No. 11/2009 which was dismissed after the Applicants failed to prosecute the appeal. He argued that the Applicants were out to frustrate his realization of the fruits of the judgment and urged the court to dismiss the application.

The issue for determination is whether the Applicants deserve leave to appeal out of time. It is apparent from the judgment of R.B.N. Maloba, SPM, delivered on 24/7/2025 that there was no appearance for the defendants when the judgment was delivered, and this fact was not controverted by the Respondent.

The court grants the Applicants leave to lodge an appeal against the judgment delivered on 24/7/2025 in Bungoma CMCC No. 128

of 2005 within 14 days of today. The costs of the application will abide the outcome of the appeal.

Delivered virtually at Bungoma this 10th day of February 2026

**K. BOR
JUDGE**

In the presence of: -

Mr. David Were for the Applicants

J. Bett- Court Assistant

No appearance for the Respondents

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