

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT KILGORIS**  
**ELC MISC (L) E013 OF 2025**

**CHARLES MORANGA.....**  
**APPLICANT**

**VERSUS**

**ALPONS BAKKER PEPERUA.....1<sup>ST</sup>**  
**RESPONDENT**

**RULING**

1. Vide his application dated 19<sup>th</sup> July 2025 the Applicant Charles Moranga (a prose litigant) seeks leave to file an appeal out of time against the decision of Hon W.C.Waswa SRM delivered on 31<sup>st</sup> of May 2024 in Kilgoris CMELC no 36 of 2002 and for the Draft Memorandum of Appeal to be deemed as duly filed upon payment of the requisite fees, as well as stay of execution orders on the Judgment and consequential decree pending hearing and determination of this application which prayer is essentially spent.
2. In support of the application the Applicant has penned the following grounds; summarized as herefollows; -
  - (i) The Applicant is dissatisfied with the judgment delivered in Kilgoris MCELC E003 of 2023 on 31<sup>st</sup> May 2024 and intends to appeal against the said judgment; the Applicant was unwell and failed to appeal within time, The delay in filing of the Appeal was occasioned by a mistake of the previous counsel, and her appeal raises pertinent issues of law and facts and has an overwhelming chance of success.
  - (ii) That interests of justice demand that the application be heard and allowed.

3. In support of the application is the supporting affidavit deponed by the Applicant who reiterates the grounds in support of the application in his deposition and has annexed a draft Memo of Appeal and a deposes at paragraph 4 thereof that immediately after delivery of Judgment he instructed Counsel to lodge an appeal but the said counsel did not file the said appeal as instructed.
4. In opposition to the application a Replying affidavit deponed by Respondent was filed.
5. It is the Respondent's deposition that
  - (i) That the Applicant did not file an appeal timeously and vacated the suit property and the Respondent took possession of the same
  - (ii) That the Application was filed 1 year and 6 months yet at time of delivery of the Judgment the Applicants then counsel was present
6. The application was argued by way of written submissions the Applicant having filed his own submissions while Mr. Onchwangi filed submissions on behalf of the Respondent.
7. The court has considered both sets of submissions by each of the party herein

### **Issues for Determination**

8. Having analyzed the application, the affidavits in support and in opposition and the submissions, as well as considered the law, the court frames the following as issues for determination
  - (i) Whether or not the application is merited?
  - (ii) What reliefs ought to issue?
  - (iii) Who bears the costs of the application?

### **Analysis and Determination**

9. The principles for enlargement of time were stated in the decision in the case of Leo Silla Mutiso vs. Rose Hellen Wangari Nairobi Civil Application 255/1997 where the court held *inter alia*; **"it is now well settled that the decision whether or not to extend the time for appealing is essentially discretionary, it is also settled that in general the matters which the court takes into account in deciding whether to grant an extension of time are first the length of the delay, secondly the reason for the delay, the chances (possibly) of the appeal succeeding if the application is granted and fourthly, the degree of prejudice to the Respondent if the application is granted"**
10. Applying the said principles to this application, the impugned Judgment was delivered on 31<sup>st</sup> March 2024 the application seeking an extension was filed 8<sup>th</sup> of August 2025. The applicant had 30 days from the 31<sup>st</sup> of March 2024 to file the Appeal. He filed the application seeking extension of time about 1 year and 6 months late.
11. That said delay was inordinate noting that from the impugned judgment annexed by the respondent, was delivered in the presence of the Applicants counsel and the applicant has deponed that he instructed his counsel to file an appeal and thereafter he was taken ill.
12. The 2<sup>nd</sup> principle is that the reason for the delay must be explained the reason for the delay raised by the Applicant was that he had been taken ill but had instructed his counsel to lodge an appeal but did not do the same is not plausible it is deponed in the replying affidavit that the Applicant vacated the suit property after judgment and the Respondent has taken possession of the same
13. The judgment having been executed by the Applicant vacating the suit property the court finds no prejudice will be occasioned to the Applicant, and since costs follow the event, the chances of the Appeal succeeding are equally slim.

14. In a nutshell, the Applicant has not satisfied any of the conditions set out in Leo Silla Mutiso decision and the court finds no merit in the application and declines to stay the execution as well as extend leave to Appeal out of time.
15. The upshot is that the application is not merited and the same is dismissed with costs to Respondent.

Dated at Kilgoris this 5<sup>th</sup> day of March, 2026.

Hon. M.N Mwanyale  
Judge

**In the presence of**

CA - Emmanuel/Sylvia/Sandra

Mr. Ochwangi for the Respondent

N/A for the Applicant acting in person