

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT**  
**LODWAR**  
**ELC MISC. NO. E001 OF 2026**

**GIDIEL** **MWITI**  
**M'ARIMI-----APPLICANT**

**VERSUS**

**LUTHERAN WORLD FEDERATION-----1<sup>ST</sup>**  
**RESPONDENT**  
**COUNTY GOVERNMENT OF TURKANA-----2<sup>ND</sup>**  
**RESPONDENT**

**RULING**

1. Through an application dated **12/1/2026**, the court is asked to extend leave to file an appeal out of time against a judgment delivered on **5/12/2024**. The reasons are contained on the face of the application and in a supporting affidavit of Jeremiah Ongeru Samba, Advocate, on **12/1/2026**. The deponent says that after the judgment was delivered, the applicant, albeit late, instructed counsel who applied for certified copies of proceedings and judgment by letter attached as **JOS-2(a)** and **(b)**, followed up by annexure **JOS-3**,

and was later issued with a certificate of delay, attached as **JOS-4**.

2. The applicant deposes that the intended appeal raises pertinent issues, as per the draft attached as **JOS-5**. The applicant states that the delay was not intentional, but resulted from the lower court registry in availing the documents which were necessary, to exercise and frame proper and arguable grounds of appeal.
3. The applicant states that the application is made in good faith, the court has unfettered discretion to extend time, and it is in the interest of justice to grant the same; otherwise, the respondents will not be prejudiced.
4. The application is opposed through a replying affidavit sworn by Girma Benti Gudina, sworn on **27/1/2026** on behalf of the 1<sup>st</sup> respondent. It is deposed that the application, which **was** filed after **403 days** delay, was only prompted by the service of a certificate of a decree for costs on **11/9/2025**. The 1<sup>st</sup> respondent says that the applicant, though the suit was dismissed, was only allowed to remain on the suit premises on condition that he complies with the regulations of the compound committee, which unfortunately he has breached.

5. The 1<sup>st</sup> respondent deposes that the application is not brought in good faith as the applicant, though he has graciously been allowed to stay on the suit premises, has not been compliant with the said regulations. The 1<sup>st</sup> respondent deposes that even after obtaining a certificate of delay on **17/12/2025**, the applicant still waited until **12/1/2026** to file this application, which delay is not explained at all.
6. The 1<sup>st</sup> respondent deposes that they will be prejudiced by the extension of time, for they have already informed the applicant of the intention to renovate the premises, which would require him to vacate the premises. The 1<sup>st</sup> respondent says that the intention to seek leave, and if the appeal is filed, is for the applicant to continue unjustly occupying the suit premises and to delay the intended renovations.
7. The 1<sup>st</sup> respondent termed the intended appeal as an abuse of the court process, vexatious, and an afterthought. The 1<sup>st</sup> respondent terms the excuse of alleged missing proceedings as a mere pretext of the applicant's own negligence, who did not exercise any due diligence at all to obtain the proceedings on time or at all.

8. The applicant relies on written submissions dated **26/1/2026**. Reliance is placed on **Leo Sila Mutiso -vs- Rose Hellen Wangari Mwangi, Nairobi CA No. 255 of 1997, Nicholas Arap Korir Salat -vs- IEBC [2015] eKLR, Muchungi Kiragu -vs- James Muchungi Kiraug & Another [1998] eKLR, Muringa Co. Ltd -vs- Archdiocese of Nairobi Registered Trustees, Civil Appeal No. 190 of 2019, Andrew Kiplagat Chemaringo -vs- Paul Kipkorir Kibet [2018] eKLR, Bernard Kibo Kitur -vs- Alfred Kiptoo Keter & Another [2018] eKLR, Muya -vs- Tribunal Appointed to Investigate the Conduct of Justice Martin Mati Muya, Judge of the High Court of Kenya, Petition No. 4 of 2020 [2022] KESC 16 [KLR], Karani -vs- Judicial Service Commission Petition No. 4 of 2020 [2022] KESC 37 [KLR, Vishva Stone Suppliers Company Limited -vs- RSR Stone (2006) Limited [2020] eKLR and Banco Arabe -vs- Bank of Uganda [1999] 1 EA 22.**
9. Extension of time is not a right but a discretionary equitable remedy granted based on the length of, and a reasonable, satisfactory explanation for the delay, potential prejudice to the respondent, and whether the intended appeal has prima facie

chances of success. See **Nicholas Kiptoo Arap Salat -vs- IEBC & Others [2014] eKLR.**

- 10.** The applicant seeks to appeal against a judgment delivered on **5/12/2024** that dismisses his suit through an application for leave filed after 1 year and **38** days. The respondent terms the delay inordinate and unexplained. The law has not set what the minimum or maximum delay is. In **Chemaringo -vs- Kibet [2018] eKLR,** the court said that an applicant has to offer a satisfactory and plausible explanation for the delay to unlock the flow of the discretionary power of the court.
- 11.** The applicant attributes the delay to the late instruction of counsel, typing, and delivery of proceedings and judgment. The letter seeking typed proceedings dated **5/12/2024**. The date it was received by the executive officer is not indicated. The date of payment of the requisite charges is missing. Evidence of payment of the same was on **10/2/2025**. A reminder was only made on **27/10/2025**. An explanation of what the applicant did between **10/2/2025** and **27/10/2025** is missing.
- 12.** Though there is a certificate of delay, it has no date of issue. The certificate does not explain that the delay was on the part of the court's registry.

Strangely, the proceedings are not attached to this application, which would have shown when they were certified, signed, and made available to the applicant. Equally, the certificate of delay only speaks to the proceedings and not when the judgment was availed to the applicant. The tracking of the judgment shows that it was online by **6/12/2024 at 7:41 a.m.** and not until **27/10/2025.**

**13.** Even if the applicant blames the court's registry, there must be evidence that the volume of the proceedings took a whopping **403** days to type. The applicant has no shouldered any blame for the delay.

**14.** Extension of time is not a matter of right. A plausible explanation for the delay has to be given. The conduct of the applicant is key. On top of that, the applicant has to show what he stands to suffer. In this case, the suit was merely dismissed, but the trial court gave a condition for the applicant to stay on the suit premises, which the respondents say he has breached. There is no supplementary affidavit to explain what the applicant seeks to suffer. He seems to have been comfortable with the judgment for a whole **1 year, 38 days.** His advocate on record has explained what he did.

- 15.** Unfortunately, the applicant has not found it necessary to substantiate or contradict the contents of the replying affidavit that he was only prompted by a notice to vacate and his own failure to abide by the terms of the order, which, though favouring him, he now wants to appeal against.
- 16.** An application for extension of time must be made in good faith, and on an appeal with chances of success, and not on mere frivolity as held in **Muringa Co. Ltd -vs- Archdiocese of Nairobi Registered Trustees, Civil Appeal No. 190 of 2019**, and **Kiragu -vs- Kiragu & Another [1998] eKLR**.
- 17.** Extenuating circumstances, according to the respondent, are the service of a certificate of costs upon the applicant on **8/10/2025**. See **Kitur -vs- Keter & Another [2018] eKLR**. Justification, reasons, rationality, and plausibility of the delay, and the circumstance's is what the applicant has to attain for the discretion to be exercised in his favour as held in **Muya -vs- Tribunal (supra)**.
- 18.** As much as there is a constitutional right to hearing was held in **Vaishya Stone Supplies Co. Ltd -vs- RSR Stone 2006 Ltd (supra)**, and in **Banco Arabe -vs- Bank of Uganda (supra)**, courts have held that it's not every case that a party who has been

allowed to be heard but has not taken it up, must be heard.

- 19.** In **Cheruiyot -vs- Onsanda & Another [2025] KEELC 6091 [KLR] (22<sup>nd</sup> September 2025) (Ruling)**, the delay was about **30** months based on the alleged unavailability of proceedings. It was found unexplained. Inordinate delay means significant, unjustified, and excessive lapse of time, where it is not explained.
- 20.** In **DPP -vs- CB Okemo & Others SCOP Appl. No. 28 of 2019**, the DPP had not filed a supplementary affidavit or submissions on the issues raised by the respondent for the delay of **502** days. It was found to be unsatisfactorily explained. The applicant was found complacent. His conduct on the issue raised doubts as to whether the same was attributable to the court's registry. The court said that it would not hesitate to dismiss an application for extension of time, for the ends of justice and public interest to be met, if it amounts to an abuse of the court process.
- 21.** In this matter, the applicant was given an opportunity to appeal, the judgment was uploaded on time, and the proceedings, which he alleges to have been waiting for until **27/10/2025**, are not even before the court. Despite dismissal of his suit,

the applicant was allowed to continue as a tenant thereon on conditions that he had not met.

- 22.** Declaration as the lawful allottee of plot **No. 186**, Kakuma trading centre. The evidence tendered showed that it was only a memorandum of appeal dated **27/6/2017**, and no longer a tenant.
- 23.** The trial court was not convinced based on the law that the applicant had provided a trial of documents on the root of title rights from the initial proprietor of the business. The trial court faulted the report by the interested party's witness alongside a purported letter of allotment dated **24/9/1992** as bereft of non-compliance with the repealed Government Land Act and **Section 5** of the National Land Commission Act.
- 24.** Looking at the judgment vis-à-vis the intended memorandum of appeal, I find no serious or arguable points with high probability of success, even if the court were to find merit in the application. The upshot is that I find the application lacking in merit. It is dismissed with costs.
- 25.** Orders accordingly.

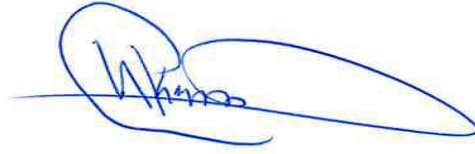
**Ruling dated, signed, and delivered** via **Microsoft Teams/Open Court** at **Kitale** on this **11<sup>th</sup>** day of **March 2026**.

**In the presence of:**

Court Assistant - Dennis

Kirima for the 1<sup>st</sup> respondent present

Nafula for the applicant present

A handwritten signature in blue ink, appearing to be 'C.K. Nzili', written over a horizontal line.

**HON. C.K. NZILI  
JUDGE, ELC KITALE.**

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