



REPUBLIC OF KENYA



**Mugera & 7 others v Njeru (Civil Application 105 of 2025)
[2026] KECA 357 (KLR) (16 February 2026) (Ruling)**

Neutral citation: [2026] KECA 357 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NYERI
CIVIL APPLICATION 105 OF 2025
A ALI-ARONI, JA
FEBRUARY 16, 2026**

BETWEEN

**MARGARET MUTHONI MUGERA 1ST APPLICANT
CATHERINE WANJIRU 2ND APPLICANT
ANN WANGARI 3RD APPLICANT
ESTHER NJERI 4TH APPLICANT
PETER NJERU 5TH APPLICANT
THOMAS MURIUKI 6TH APPLICANT
BENSON KARIMI 7TH APPLICANT
MARY WAINOI 8TH APPLICANT**

AND

JOHN MUGERA NJERU RESPONDENT

(An application for extension of time to file an appeal against the Judgment of the Environment and Land Court at Kerogoya (Cherono, J.) dated 1st July 2022 in ELC Case No. 609 of 2013)

RULING

1. Before me is an application seeking an extension of time to lodge a notice of appeal and to file a record of appeal out of time against the judgment of the Environment and Land Court (ELC) at Kerogoya (Cherono, J.), under rule 4 of the Court of Appeal Rules (Court's Rules). There is also a second prayer seeking the maintenance of the status quo in respect of L.R. Nos. Inoi/Kerogoya/871, Inoi/Kariko/1327, and Inoi Kariko/1328.



2. The application is supported by the grounds on the face of the application and the supporting affidavit of Margaret Muthoni Mugera, the 1st applicant, who is the mother of the 2nd to 8th applicants and a step sister to the respondent. Judgment in the intended appeal; ELC Case No. 609 of 2013 was entered on the 1st July 2022. The applicant deposes that she has always been desirous of appealing but was incapacitated due to sickness and lack of finances; she is 80 years old; her children live from hand to mouth and were unable to lodge the appeal; through the Judiciary Open Day she got legal assistance and counsel on record is acting pro bono; it is necessary for the Court to determine whether the succession cause and transfer thereon determined existing trusts under section 28 of the Land Registration Act; the appeal has high chances of success; the grounds in support of the delay are plausible, and she ought to be granted the extension of time.
3. The respondent opposes the application in his replying affidavit dated 13th February 2026. He deposes that the 3-year delay is inordinate; the hospital's letter does not explain the delay; the other applicants were not sick; the claim of lack of funds is not supported by evidence; and the court dismissed the claim of customary trust on various grounds.
4. Learned counsel for the appellant filed submissions dated 3rd February 2026, reiterating the averments in the affidavit of the 1st applicant, which I need not regurgitate here. Counsel submits that the applicants have a reasonable excuse for the delay, including sickness, old age, and financial instability. There is a demonstration that the appeal has a high chance of success and further the respondent will not suffer any prejudice should the orders be granted. In support of the submissions, counsel relied on Nyongesa vs. Lukuyu, Civil Application No. E 24 of 2025 [2025] KECA 1044 (KLR), and the Supreme Court decision of Nicholas Kiptoo Arap Korir Salat vs. IEBC & 7 Others [2014] eKLR.
5. The learned counsel for the respondent in his submissions dated 13th February 2026, submits that the delay of 3 years is inordinate and inexcusable, and the applicants do not deserve an equitable remedy. He reiterates that the hospital's letter does not explain the delay and the applicants have not filed any documents to establish what the status quo is. He urges for the application to be dismissed.
6. Yet again, an omnibus application finds itself in Court with a prayer squarely for the consideration of a single judge and the second for consideration by a full bench. This practice is murky and untidy. This Court, presided over by a single judge, can only deal with an extension of time. Only if the same is successful can the applicant move a full bench under rule 5(2)(b). In Associated Construction Company (K) Ltd vs. Kyamu Construction & Engineering Ltd (Civil Application E047 of 2022) [2022] KECA 872 (KLR), this Court stated:

“This is yet another of those untenable omnibus applications where the applicant, Associated Construction Co (K) Ltd, seeks, in the same application, an order for extension of time to file an appeal out of time and an order for stay of execution. This Court has decried this practice, which is taking root among some practitioners at an alarming rate. Recently in Abdulrazak Rageh Haji v. Mahadho Abdulrazak Adichare, CA No. E030 of 2020 I stated as follows regarding this practice:

“Before me is one of those omnibus applications that this Court has decried time and again. (See, for example, Riccardo Fannelli & 2 Others v. Frigieri Graziano, Civil Application No. 51 of 2015 and Christopher Iddi Moto & 15 Others v. Chiriba Nyambu Barua, Civil Application No 43 of 2014). The applicant seeks extension of time to file a notice of appeal and in the same application, an order for stay of execution of the judgment and decree that he intends to appeal. It is not rocket science to appreciate that under the Court of Appeal Rules an application



for extension of time is the remit of a single judge whilst an application for stay of execution is the business of the full court. How exactly the same application can be heard in instalments, first by a single judge, and subsequently by the full Court, is not clear to me. Plus, a party cannot obtain stay of execution of a decree or judgment of the High Court without first filing a notice of appeal!

This practice has to stop forthwith. For purposes of this application, and in deference to Article 159(2)(d) of *the Constitution*, I shall treat the application before me as one solely concerned with extension of time. After all, that is the only issue that I can legitimately deal with as a single Judge.”

7. Similarly, I will only deal with the prayer seeking for an extension of time. Should the applicant be successful they may apply for other orders before the correct forum.
8. I have considered the application, the supporting affidavit and the rival submissions. The issue for determination is whether the applicant is to be granted an extension of time to file a notice of appeal out of time.
9. Rule 4 of the Court of Appeal Rules states that; -

The Court may, on such terms as may be just, by order, extend the time limited by these Rules, or by any decision of the Court or of a superior court, for the doing of any act authorized or required by these Rules, whether before or after the doing of the act, and a reference in these Rules to any such time shall be construed as a reference to that time as extended.

10. In *Ruriga vs. Njuki* (Civil Application 100 of 2020) [2023] KECA 3 (KLR), the Court stated:

“...the factors I am supposed to take into consideration in the determination of an application of this nature are first, the length of the delay, secondly, reason(s) of the delay. Thirdly, possible arguability of the intended appeal and fourthly, any prejudice to be suffered by the opposite party should the relief sought by the applicant be granted. Fourthly (sic), any public interest that may be involved in the matter.”
11. In *Andrew Kiplagat Chemaringo vs. Paul Kipkorir Kibet* [2018] eKLR, the issue of time was discussed. This Court stated that:

“The law does not set out any minimum or maximum period of delay. All it states is that any delay should be satisfactorily explained. A plausible and satisfactory explanation for delay is the key that unlocks the court’s flow of discretionary favour. There has to be valid and clear reasons, upon which discretion can be favourably exercisable.” (Emphasis added)
12. It is not easy or even possible to produce evidence of poverty in an application as has been proposed by the respondent. Secondly, a record of one’s illness cannot explain a delay. It would be absurd to expect the applicants to have demonstrated the two as urged by the respondent.
13. The 1st applicant is the one who is claiming the land from her stepbrother; the other applicants are her children and do not have a direct claim. Any claim they may have stems from the 1st applicant. She is the prime mover of this matter, so to speak. She is aged, 80 years, is poverty-stricken, ailing and has only managed to get counsel on a probono basis. This is a sufficient explanation for the 3-year delay. As stated by this Court in *Andrew Kiplagat Chemaringo vs. Paul Kipkorir Kibet* (supra), sufficient



explanation unlocks the court's flow of favour and there is no minimum or maximum period of delay. Indeed, every case must be considered within its own peculiar circumstances.

14. In the attached draft memorandum of appeal has three grounds as follows: the trial Judge failed; to consider the record in its totality, which would have led him to consider the customary trust; finding that the issue of trust was determined at succession and upon subdivision; and judgment was against evidence, pleadings and applicable legal principles. In my view, one cannot at this stage say that the grounds are idle.
15. Lastly, there has been no demonstration of the likely prejudice to be suffered by the respondent should the time be extended.
16. Having found the reasons for delay are plausible, there being prima facie arguable grounds and no prejudice likely to be suffered in the circumstance I am persuaded to allow the application. The notice of appeal be lodged and served within 7 days, and the record of appeal be filed 45 days from the date of this ruling.

DATED AND DELIVERED AT NYERI THIS 16TH DAY OF FEBRUARY, 2026.

ALI-ARONI

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JUDGE OF APPEAL

I certify that this is a true copy of the original.

Signed

DEPUTY REGISTRAR

