



**Njenga v Kinyanjui & another; Njiire (Third party) (Environment and Land Case 324 of 2015) [2026] KEELC 1145 (KLR) (19 February 2026) (Ruling)**

Neutral citation: [2026] KEELC 1145 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT AND LAND CASE 324 OF 2015  
CG MBOGO, J  
FEBRUARY 19, 2026**

**BETWEEN**

**RUTH GATHONI NJENGA ..... PLAINTIFF**

**AND**

**WALLACE KAMAU KINYANJUI ..... 1<sup>ST</sup> DEFENDANT**

**KAHAW WEST INVESTMENT COMPANY ..... 2<sup>ND</sup> DEFENDANT**

**AND**

**FRANCIS NJIIRE ..... THIRD PARTY**

**RULING**

1. The 1<sup>st</sup> defendant/applicant filed the notice of motion dated 9<sup>th</sup> July, 2025 expressed to be brought under Article 159 (2)(d) of *the Constitution*, Section 1A,1B and 3A of the *Civil Procedure Act*, Section 7 of the *Appellate Jurisdiction Act*, Order 42 Rule 6 and Order 51 Rule 1 of the Civil Procedure Rules seeking the following orders:-
  1. That the court be pleased to extend time within which the 1<sup>st</sup> defendant/applicant was to file the notice of appeal from the judgement and decree of Hon Justice E.K Wabwoto made on 20<sup>th</sup> March, 2024 in this matter and the notice of appeal filed on 1<sup>st</sup> June, 2024 and dated 30<sup>th</sup> May, 2024 be deemed to have been filed on time.
  2. That the costs of this application to abide by the outcome of the intended appeal.
2. The application is premised on the grounds inter alia that the 1<sup>st</sup> defendant/applicant is aggrieved by the judgment of this court delivered on 20<sup>th</sup> March, 2024. The application was further supported by the affidavit of the 1<sup>st</sup> defendant/applicant sworn on even date. He deposed that this court delivered judgement in favour of the plaintiff/respondent allowing the entirety of the orders sought for in the plaint with costs of the suit.



3. That at the time of the delivery of the judgement, he was not aware of the judgement date and his advocates on record, Messrs. Kimani Kahete advocates, were also seemingly unaware of the same, hence the delay in taking steps towards appealing the judgement.
4. The 1<sup>st</sup> defendant/applicant deposed that initially the judgement in the matter was to be delivered on 27<sup>th</sup> April, 2023 but the same was not read on that date, with the court directing that the same would be delivered on notice. He deposed that he diligently followed up with his advocates who asked him to await the notice.
5. That even after consistent follow ups for the larger part of 2023 and beginning of 2024, his former advocates did not inform him of any such notice, and that sometime in the month of May 2024 he was contacted by strangers asking him to vacate the suit property in line with the judgement, which he was unaware had been delivered.
6. The 1<sup>st</sup> defendant/applicant deposed that an application seeking extension of time within which to file the notice of appeal which was dated 11<sup>th</sup> June, 2024 was then struck out due to the issue of representation of his advocates, which he states was a mishap on the part of the court in printing out the notice of change of advocates from the cts system as it was filed together with a consent from his former advocates handing over to the current advocates on record, Messrs. Musa Boaz and Thomas advocates.
7. The 1<sup>st</sup> defendant/applicant deposed that he had been consistently following up on the judgment, which apparently became irritating to his former advocates, and he then realized they had failed him, thus he contracted the new firm of advocates to take over after he realized the judgment had already been delivered. Further, he deposed that he stands to suffer serious and substantial loss should the application not be granted considering that he has been diligent in following up of this case. He prayed that it is in the interest of justice that he should be granted the opportunity to ventilate his appeal, which raises substantial issues of law and facts.
8. The application was opposed by the replying affidavit of the plaintiff/respondent sworn on 10<sup>th</sup> December, 2025. The plaintiff/respondent deposed that the extension of time to lodge an appeal is not a right of a party but an equitable remedy that is available to a deserving party, and that the 1<sup>st</sup> defendant/applicant is guilty of laches and delay in filing the instant application.
9. Further, that the notice of delivery of judgment was duly served to the advocates, including the 1<sup>st</sup> defendant/applicant's former advocates via email, and further that the matter was listed in the cause list. She annexed a copy of the email serving the notice to all the advocates on record. The plaintiff/respondent termed this instant application as an abuse of the court process and an afterthought meant to forestall execution of the decree and to deny her from enjoying the fruits of the judgment.
10. The application was canvassed through written submissions. The 1<sup>st</sup> defendant/applicant filed his written submissions dated 17<sup>th</sup> December, 2025. The plaintiff/respondent filed her written submissions dated 17<sup>th</sup> December, 2025.
11. I have considered the application, the reply thereof, and the written submissions filed by the respective parties. The issue for determination is whether the court should extend time to allow for the filing of the notice of appeal.
12. The 1<sup>st</sup> defendant/applicant seeks extension of time within which to file the notice of appeal against the judgment of this court delivered on 20<sup>th</sup> March, 2024. The 1<sup>st</sup> defendant/applicant brought this



application under among other provisions, Section 7 of the [Appellate Jurisdiction Act](#) which provides that:

“The high court may extend the time for giving notice of intention to appeal from a judgment of the high court or for making an application for leave to appeal or for a certificate that the case is fit for appeal, notwithstanding that the time for giving such notice or making such appeal may have already expired.”

13. As stated in the previous ruling delivered on 30<sup>th</sup> June, 2025 it is evident that the decision to extend the time for filing a notice of appeal is discretionary. In deciding whether or not to grant an extension to allow for filing of the notice of appeal, the reasons advanced for failure to file the said notice within the time stipulated ought to be reasonable. In doing so, the court also has to ensure that the right of the opposing party is also considered to avert any injustice. The 1<sup>st</sup> defendant/applicant contended that he did not know that judgment had been delivered on 20<sup>th</sup> March, 2024 and neither were his previous advocates aware. Further, that he made follow-ups on the same, and that when he learnt of the same sometime in the month of May 2024, he gave instructions for filing of the memorandum of appeal. Equally, he contended that the advocates did not file the notice of appeal, and the memorandum of appeal, which prompted him to instruct the counsel who is now on record.
14. While contending that the notice was served on all the parties, the plaintiff/respondent has not demonstrated any prejudice that she will suffer or is likely to suffer if the orders sought are granted. The plaintiff/respondent has also not denied that the judgment was to be initially delivered in the year 2023 and that there was delay leading to its delivery in March 2024. I am mindful to note that there could possibly have been a break down of the relationship between the 1<sup>st</sup> defendant/applicant and his former advocates thus leading to non-communication.
15. In my view, I find the reasons advanced by the 1<sup>st</sup> defendant/applicant sufficient in the circumstances to enable this court exercise discretion in his favour. I also believe that it is his right as an aggrieved party to ventilate his issues before the court of appeal, and for this reason, this court is called to uphold substantive justice.
16. From the above, I find merit in the notice of motion dated 9<sup>th</sup> July, 2025 and it is hereby allowed as follows:-
  - a. This court hereby extends time within which the 1<sup>st</sup> defendant/applicant was to file the notice of appeal from the judgement and decree of Hon Justice E.K Wabwoto delivered on 20<sup>th</sup> March, 2024.
  - b. The notice of appeal filed on 1<sup>st</sup> June, 2024 and dated 30<sup>th</sup> May, 2024 is hereby deemed to have been filed on time.
  - c. The costs of this application to abide the outcome of the intended appeal.

It is so ordered.

**DATED, SIGNED & DELIVERED VIRTUALLY**

**THIS 19<sup>TH</sup> DAY OF FEBRUARY, 2026.**

**HON. MBOGO C.G.**

**JUDGE**

**19/02/2026.**



In the presence of:

Ms. Benson Agunga - Court assistant

Mr. Tumu for the 1<sup>st</sup> Defendant /Applicant

Mr. Nyanjwa holding brief for Mr. Gachoka for the Plaintiff/Respondent

