



REPUBLIC OF KENYA



**Olukwo v Khwale & 2 others (Environment and Land Miscellaneous Application
E004 of 2024) [2026] KEELC 1129 (KLR) (25 February 2026) (Ruling)**

Neutral citation: [2026] KEELC 1129 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E004 OF 2024
A NYUKURI, J
FEBRUARY 25, 2026**

BETWEEN

JACKSON OKUTOYI OLUKWO APPLICANT

AND

WASHINGTON WASHIALI KHWALE 1ST RESPONDENT

KONGO WILBERFORCE 2ND RESPONDENT

THE LAND REGISTRAR, KAKAMEGA 3RD RESPONDENT

RULING

Introduction

1. Before court is a Notice of Motion dated 14th February, 2024 filed by the applicant seeking the following orders:
 - a. Spent.
 - b. That the Honorable Court be pleased to grant leave to the applicant herein to file an appeal out of time from the judgment and decree in Mumias Senior Principal Magistrates Court M.E.L.C No. 20 of 2018.
 - c. That the draft Memorandum of appeal be deemed as duly filed upon payment of the court required fees and be the appeal be admitted out of time.
 - d. That there be a stay of execution of orders issued in Mumias Senior Principal Magistrates Court M.E.L.C No. 20 of 2018 on 4th August, 2021 pending hearing and determination of this appeal.
 - e. Spent



- f. That the costs of this application be provided for.
2. The application is predicated on the affidavit sworn by the applicant on 14th February, 2024. The applicant's case is that he filed Mumias Senior Principal Magistrates Court M.E.L.C No. 20 of 2018 seeking declaratory orders that parcel No. E. Wanga/Isongo/2503 belongs to him, that the registration be rectified in his favour and for eviction of trespassers thereon.
 3. That both parties were heard on merit. That judgment was fixed on 25/11/2020 but on that date, it was not ready and was rescheduled to 19/03/2021. That on this date, judgment was not ready and the court stated that it will be delivered on notice. That he never received any notices even on inquiry. That his advocate did not inform him of the date of judgment.
 4. It was his further averment that the advocate informed him to continue waiting for judgment as the Magistrate who heard the matter was transferred. That he learnt from his area Chief that judgment was delivered in December 2023 and that he was supposed to vacate the suit property together with the purchaser who had acquired interest therein. That upon perusing the court file, he realized that his former advocate had even sought certified proceedings which were supplied on 7th December 2022. That the advocate although planning to file appeal, never communicated to him.
 5. He alleged that he learnt that a certificate of delay was issued on 27th September 2023 indicating that proceedings in the lower court were ready by 7th December 2022. That on 8th February 2024, he was called by the clerk of his former advocate inquiring why he never attended court. That he was not informed of the need to attend court. That he made inquiries at the court registry and discovered that the said clerk had without his knowledge and instructions filed Kakamega Misc Application No. E002 OF 2024, which application was dismissed on 8th February 2024.
 6. That in the judgment, the plaintiff's case was dismissed and the 1st defendant declared owner of the suit property among other orders. That since the entry of judgment in 2021, the defendant has never executed the judgment. That he has an arguable appeal. That he will suffer irreparable damage if orders sought are not granted.
 7. The application was opposed. The 1st respondent filed replying affidavit dated 15th March 2024. He stated that he purchased parcel No. E.Wanga/Isongo/2503 measuring 1 acre in 2003. That regarding the suit property, the applicant has filed three different suits which have been determined in his favour; namely; Kakamega HCCA No. 63 of 2008, Kakamega ELC MISC APP. No. E006 of 2023 and Kakamega ELC MISC APP No. E002 OF 2024.
 8. He stated that the applicant was aware that he sold him the suit property but went ahead to sell to other unsuspecting members of public who proceeded to develop the same in defiance of court orders. That the applicant disregarded orders in Kakamega Misc ELC No. 20 OF 2018.
 9. Further that certified proceedings were applied for on 15/12/2021 and supplied to him on 7/12/2022 as indicated in the certificate of delay dated 17/09/2023. That the Kakamega Misc No. E002 OF 2024 was dismissed with costs. That applications seeking orders similar to those sought in the instant application, namely; Kakamega Misc E006 OF 2023 and Misc E002 of 2024 where the applicant swore the supporting affidavits were all dismissed. That the instant application is meant to delay justice.
 10. The 2nd respondent filed replying affidavit dated 29th October 2024. He stated that he already served the judgment. That the instant application lacked merit and that the applicant failed to act diligently. That delay in filing the appeal was not excusable as they had been attending court and that the applicant has been sleeping on his rights.



11. He also stated that the applicant had not demonstrated good faith. That the appeal does not raise arguable grounds. That the delay of three months is inexcusable. That the Court of Appeal at Kisumu handled that matter conclusively on appeal in Appeal No. E107 of 2023.
12. That the respondent and his family will not suffer substantial loss if inhibition orders are not granted as they are the bona fide registered owners of the suit property, and that the suit property is not part of the estate of the applicant. That the applicant has come to court with unclean hands.
13. No response was filed by the 3rd respondent.
14. In arguing their respective cases, parties filed written submissions. On record are submissions filed by the applicant dated 10th December 2024 and those of the respondents dated 17th March 2025; both of which the court has duly considered.

Analysis and determination

15. The court has carefully considered the application, response thereto and rival submissions. Two issues arise for the court's determination namely;
 - i. Whether there is a good and sufficient cause for the court to grant extension of time to the applicant to file appeal out of time.
 - ii. Whether the applicant has met the threshold for grant of stay of execution.
16. Section 79G of the *Civil Procedure Act* provides that appeals from the subordinate court to this court shall be filed within 30 days of the delivery of the decision sought to be appealed against, but the court may admit an appeal out of time where good and sufficient cause is shown.
17. Order 50 Rule 6 of the Civil Procedure Rules provides for extension of time as follows;

“Power to enlarge time [Order 50, rule 6]

Where a limited time has been fixed for doing any act or taking any proceedings under these Rules, or by summary notice or by order of the court, the court shall have power to enlarge such time upon such terms (if any) as the justice of the case may require, and such enlargement may be ordered although the application for the same is not made until after the expiration of the time appointed or allowed:

Provided that the costs of any application to extend such time and of any order made thereon shall be borne by the parties making such application, unless the court orders otherwise.”
18. This court has both the jurisdiction and unfettered discretion to extend time. In determining whether or not to grant extension of time, the court considers the length of the delay, the reason for the delay and the interests of justice. An applicant for extension of time must explain the reasons for the delay to the court's satisfaction as extension of time is not a right of a party.
19. In the case of *Nicholas Kiptoo Arap Korir Salat –vs- Independent Electoral and Boundaries Commission & 7 Others (2014) e KLR*, the Supreme Court of Kenya stated principles that govern the court's discretion in an application for extension of time as follows;
 1. “Extension of time is not a right of a party. It is an equitable remedy that is only available to a deserving party at the discretion of the court;
 2. A party who seeks for extension of time has the burden of laying the basis to the satisfaction of the court.



3. Whether the court should exercise the discretion to extend time, is a consideration to be made on a case to case basis;
 4. Whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the court;
 5. Whether there will be any prejudice suffered by the respondents if the extension is granted;
 6. Whether the application has been brought without undue delay; and
 7. Whether in certain cases, like election petitions, public interest should be a consideration for extending time.”
20. In the instant matter, the applicant’s reason for delay is that he was unaware of delivery of judgment. The judgment herein was delivered on 4th August 2021. The certificate of delay was issued on 27th September 2023, while the instant application was filed on 19th February 2024. The delay between issuance of certificate of delay and filing the instant application, which is over four months is not explained.
21. The delay between 4th August 2021 when judgment was delivered and when the instant application was filed on 19th February 2024, is a delay of two years and six months. That, is an inordinate delay, which has been not been convincingly explained because the applicant sought for certified proceedings and judgment vide his advocate’s letter dated 15th December 2021 which means that the applicant was already aware of the delivery of judgment as of 2021. Therefore, his allegation that he was not made aware of the judgment and only learnt in January 2024 from the court registry is not an honest deposition.
22. Besides, the applicant made a similar application vide Kakamega ELC MISC E006 of 2023 and which application was dismissed by this court on 23rd November 2023.
23. Ultimately, I find and hold that the application dated 14th February 2024 lacks merit and the same is hereby dismissed with costs to the 1st and 2nd respondents.
24. It is so ordered.

DATED, SIGNED AND DELIVERED AT KAKAMEGA VIRTUALLY/OPEN COURT THIS 25TH DAY OF FEBRUARY 2026 THROUGH MICROSOFT TEAMS VIDEO CONFERENCING PLATFORM

A. NYUKURI

JUDGE

In the presence of;

Mr. Okali for the applicant

The 1st and 2nd respondents in person

No appearance for the 3rd respondent

Court Assistant: Delphine

