

**IN THE COURT OF  
APPEAL AT NAIROBI**

**CIVIL APPLICATION NO. NAI E017 OF  
2026 (CORAM: ONG'UDI, JA (IN  
CHAMBERS))**

**BETWEEN**

**VESHA FOODS CATERERS.....APPLICANT**

**AND**

**NATIONAL LAND COMMISSION.....1<sup>ST</sup>  
RESPONDENT KENYA NATIONAL HIGHWAY  
AUTHORITY...2<sup>ND</sup> RESPONDENT THE ATTORNEY  
GENERAL.....3<sup>RD</sup> RESPONDENT**

*(Application for extension of time within which to file and serve appeal against the Judgement and orders of the Environment and Land Court at Machakos by (A. Nyukuri delivered on the 20<sup>th</sup> of November 2024)*

**in**

**ELCPET No. E025 of 2021)**

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**RULING**

1. This ruling is in respect of the Notice of Motion dated 12<sup>th</sup> January, 2026 seeking leave to file appeal out of time against the judgment in Machakos ELC Petition No. E025 of 2021 delivered on 20<sup>th</sup> November, 2024. The application is filed under Rule 41 of the Court of Appeal Rules, 2022 and is premised on the grounds on the face of the application and the supporting affidavit by Daniel Awuondo sworn on 12<sup>th</sup> January, 2026, the applicant's director. There is no replying affidavit on record by any of the respondents.

2. In the grounds and supporting affidavit the applicant has explained that:

- (i) It was granted leave to file appeal but unknown to it, its former advocates did not act accordingly.**
- (ii) A request for certified copies of the proceedings and judgment took too long to be availed, hence the delay.**
- (iii) That the intended appeal has high chances of success since it raises triable issues.**

3. Its submissions were filed by Swaka advocates and are dated 19<sup>th</sup> February, 2026. Counsel identified one issue for determination which is whether leave should be granted for the Applicant to file appeal out of time. He submitted that to grant or not to grant the leave sought is an exercise of discretion for the deciding court, based on fixed principles. Relying on the decisions in;

- (i) First American Bank of Kenya Limited Vs. Gulab P. Shah & 2 Others, Nairobi (Milimani) HCCC No. 2255 of 2000 [2002]1 EA 65**
- (ii) Edith Gichugu Koine Vs. Thoithi [2014] eKLR.**

Counsel summarized the principles that need proof in such an application to be as follows:

- (a) Whether there is a good or sufficient reason for the delay.**

- (b) Whether the intended appeal is meritorious or has high chances of success.
- (c) Whether the respondent will suffer prejudice if leave is granted.

4. Counsel submitted that the Applicant has demonstrated that the delay in lodging the appeal was neither deliberate nor inordinate. That a request for copies of the proceedings and judgment was made promptly, and all along the Applicant believed its former advocates were preparing the appeal. Counsel cited the case of **Andrew Kiplagat Chemamingo Vs. Kibet [2018] eKLR** in support.
5. On whether the intended appeal is meritorious, Counsel argued that for an appeal to be arguable all that is needed is a bonafide arguable ground of appeal to be raised. He placed reliance of the cases of **Stanely Kangether Kinyanjui Vs. Tony Ketter & 5 Others [2013] KECA 378 (KLR), Damji Pragi Mandavia Vs. Sara Lee Household & Body Care (K) Ltd, Civil Application No. Nai. 345 of 2004** and **Joseph Gitahi Gachau & Another Vs. Pioneer Holdings (A) Ltd & 2 Others, Civil Application No. 124 of 2008.**

He thus contended that the intended appeal raises bonafide and triable issues deserving consideration by this court. That

the Applicant's grievances arise from the dismissal of its

Constitutional Petition and the intended appeal seeks to challenge the findings and conclusion by the trial court.

6. Finally, on whether the respondents will suffer any prejudice if leave is granted, Counsel answered in the negative saying the matter had already been determined by the trial court. He argued that it is the Applicant that would be prejudiced if leave is denied since the impugned decision had resulted in the closure of its business thereby exposing it to substantial financial loss. He thus urged the Court to allow the application and grant the prayer sought.
7. I have considered the application, grounds and affidavit in support and the submissions. The issue I find falling for determination is whether the Applicant has made out a case for issuance of the prayer sought. Counsel has clearly set out the principles to be proved in an application of this nature. Besides the authorities cited, I add the Supreme Court Case of **Nicholas Salat Kiptoo Arap Korir Vs. Independent Electoral & Boundaries Commission & 7 Others [2014] KE SC 12.**
8. There is no dispute that indeed there has been delay in filing the intended appeal. I further note that the application

is not opposed despite service of the same on the  
Respondents who

were also served with a hearing notice. On record is a copy of a letter dated 7<sup>th</sup> December 2024 to the Deputy Registrar, Machakos ELC by Kipng'eno & Associates Advocates for the Applicant (Annexures CMI). It sought for typed proceedings for purposes of appeal. (A copy of the judgment and court proceedings certified by the Deputy Registrar has also been annexed (CM2). The Deputy Registrar did not however date the certification.

From the pleadings herein and the letter marked CM1, it is clear that the Applicant changed advocates after the request for proceedings and judgment, partly causing the delay. This has not been challenged. Upon analysis of all these facts, I am satisfied that the cause of delay has been satisfactorily explained.

9. On whether the appeal is arguable I refer to the pleadings in the Petition before the Machakos ELC. The Applicant who was the petitioner therein sought for compensation for its plot that was compulsorily acquired by the Respondents. It claimed to have had a hotel business running on the said plot. The trial Court found otherwise. This is an arguable ground of appeal which would entitle the Applicant to the

leave sought. In view

of the facts established, the Respondents will not suffer any prejudice as they have a judgment in their favour. It will be fair and just to afford the Applicant an opportunity to file its intended appeal.

10. This is reinforced by the fact that the typed proceedings and judgment are ready and so preparation of the record of appeal should take the shortest time.

11. I therefore, allow the notice of motion dated 12<sup>th</sup> January 2026.

The leave sought to file appeal out of time is granted. The applicant to file and serve the Notice of Appeal within seven (7) days from today's date.

It is so ordered.

**Dated and delivered at Nairobi this 13<sup>th</sup> day of March 2026.**

**H. ONG'UDI**

.....  
**JUDGE OF APPEAL**

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

***Signed***

**DEPUTY**

**REGISTRAR.**