

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT NYAMIRA**  
**ELCLMISC No. E004 OF 2026**

**ANDERSON NDEGE** .....  
**APPLICANT**

**VERSUS**

**PATROBAS NDEGE** .....  
**1<sup>ST</sup> RESPONDENT**

**GEOFREY NDEGE** .....  
**2<sup>ND</sup> RESPONDENT**

**RULING**

1. The Applicant moved the Court through Notice of Motion dated 25<sup>th</sup> February 2026, seeking the following orders:

- i. THAT the application be certified as urgent and service thereof be dispensed with the first instance and be heard ex-parte.*
- ii. THAT this honourable court be pleased to grant leave to the applicant to file an appeal out of time.*
- iii. THAT this honourable court be pleased to issue interim order of stay of the judgment delivered on the 29<sup>th</sup> day of October 2025 in MELC NO. E026 OF 2021 pending hearing and determination of this application.*
- iv. THAT this honourable court be pleased to grant an order of stay of execution of the judgment delivered on 29<sup>th</sup> day of October 2025 and the decree arising therefrom*

*pending hearing and determination of the intended appeal.*

*v. THAT the costs of and incidental to this application be costs be provided for.*

2. The application is based on the grounds listed on its face and is supported by an affidavit sworn by the Applicant. He deposed that he was aggrieved by the judgment which delivered by the Subordinate Court on 29<sup>th</sup> October 2025 in Nyamira MELC NO. E026 of 2021 in his absence. That he only became aware of the judgment on 9<sup>th</sup> January 2026 after he was served with an application to execute it.
3. The Applicant also stated that he was then acting in person and that the judgment was delivered without his active participation in the proceedings. That he wished to exercise his right of appeal and that he would be rendered destitute and homeless if stay is not granted.
4. The Respondents opposed the application through a replying affidavit sworn by the First Respondent. He deposed that the Applicant was not truthful and had not filed the application in good faith. That the Applicant filed a similar application in the Subordinate Court seeking stay and setting aside which was dismissed. That in the circumstances the application was both *res judicata* and an abuse of the Court process.

5. The First Respondent further deposed that the Applicant had tactfully remained silent on why he did not appeal within time and that discretion could only be exercised in the Applicant's favour if he explained the delay. That following the judgment, the suit land had been registered in the Respondents' name and that there was nothing to stay.
6. The application was canvassed through written submissions. The Applicant filed submissions dated 11<sup>th</sup> March 2026 while the Respondents filed submissions dated 5<sup>th</sup> March 2026.
7. I have carefully considered the application, the affidavits, and the submissions. The issues that arise for determination are whether leave to file an appeal out of time should be granted and who should bear costs of the application.
8. The Applicant is seeking leave to file an appeal out of time against the judgment and decree of the Subordinate Court passed on 29<sup>th</sup> October 2025 in Nyamira MELC NO. E026 of 2021 (Hon. C I Agutu (PM)). Pursuant to **Section 16A (1)** of the **Environment and Land Court Act, 2011**, an appeal from the subordinate court to this court is to be filed within 30 days of delivery of the judgment or ruling. Further, **Section 16A (2)** of the Act gives this Court jurisdiction to admit an appeal out of time if the Appellant satisfies the court that he had a good and sufficient cause for not filing it in time.
9. The Supreme Court stated as follows in the case of in **Nicholas Kiptoo Arap Korir Salat v Independent**

**Electoral and Boundaries Commission & 7 others** (supra), regarding the principles applicable to an application for enlargement of time:

***This being the first case in which this Court is called upon to consider the principles for extension of time, we derive the following as the under-lying principles that a Court should consider in exercise of such discretion:***

- 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 a 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; ....**

10. The present application was filed on 27<sup>th</sup> February 2026, some four months after delivery of the judgment. Considering the date of delivery of the judgment, any appeal against it ought to have been filed by 28<sup>th</sup> December 2025. Given the date of filing of the application, there was a delay of two months.
11. The Applicant has sought to explain the delay by stating that the judgment was delivered in his absence and that he only became aware of it on 9<sup>th</sup> January 2026 after he was served with an application to execute it. Is that really the case? I am not persuaded. The Respondents annexed a copy of an application dated 8<sup>th</sup> January 2026, which the Applicant filed in the Subordinate Court seeking setting aside of the judgment. He did not state anywhere in the application that he was not aware of the date of delivery of the judgment. Instead, he sought to attack the judgment on its merits.
12. In the present application, the Applicant did not disclose that he had filed the application dated 8<sup>th</sup> January 2026 in the Subordinate Court and that the application had been dismissed through ruling delivered on 15<sup>th</sup> January 2026. On the contrary, he painted a misleading picture of a litigant who was unaware of the judgment until 9<sup>th</sup> January 2026. What is now manifest is that by the time he was filing the present application on 27<sup>th</sup>

February 2026, he deliberately withheld the crucial details of the post judgment developments.

13. Extension of time is a discretionary and equitable relief. A party seeking it must approach the Court with a full and frank disclosure. I am not satisfied that the Applicant has discharged the burden of laying a basis to the satisfaction of the Court.

14. I find no merit in Notice of Motion dated 25<sup>th</sup> February 2026. I dismiss it with costs to the Respondents.

**Dated, signed, and delivered at Nyamira, this 25<sup>th</sup> day of March 2026.**

**D. O. OHUNGO  
JUDGE**

Delivered in the presence of:  
Mr Ondima for the Applicant  
Mr Soire for the Respondents  
Court Assistant: B Kerubo