



Ndwiga & 2 others v Kariuki & 5 others (Environment and Land Miscellaneous Case E025 of 2025) [2026] KEELC 1805 (KLR) (19 March 2026) (Ruling)

Neutral citation: [2026] KEELC 1805 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT EMBU
ENVIRONMENT AND LAND MISCELLANEOUS CASE E025 OF 2025
EC CHERONO, J
MARCH 19, 2026**

BETWEEN

**SIMON NAMU NDWIGA 1ST APPLICANT
LYDIA GACHONI NGARURI 2ND APPLICANT
VICTORIA NGINYA NYAGA 3RD APPLICANT**

AND

**NICHOLAS KARIUKI 1ST RESPONDENT
JONATHAN NJERU 2ND RESPONDENT
LUCY MUTHONI 3RD RESPONDENT
FRANSISCO NJERU 4TH RESPONDENT
DANIEL KIBUGI 5TH RESPONDENT
JAMES KINYUA 6TH RESPONDENT**

RULING

1. Vide the Notice of Motion application dated 29/08/2025, the Applicants are seeking leave to file an appeal out of time against the judgement and orders of Honourable S.K Ngii in Siakago MCELDC Case No. E047 of 2023 delivered on 10/07/2025.
2. The application is based on grounds on the face of the application supported by the affidavit of the 1st Applicant, Simon Namu Ndwiga sworn on 29/08/2025. He deposed that judgment herein was delivered on 10/07/2025, and that they are dissatisfied with the same and intend to appeal, but were unable to do so within the statutory period of 30 days due to factors beyond their control and not out of any intentional delay. He averred that they have not been supplied with copies of the certified



proceedings, judgement and decree despite applying for the same and thus they could not sufficiently gauge the merits or otherwise of the appeal.

3. He contended that notwithstanding the supply of the judgement, they could sufficiently state from the pleadings filed in court that the learned trial Magistrate erred in law and facts in going against the weight of the evidence on record. They attached a copy of the letter requesting for a certified judgement, proceedings and decree of the Magistrates Court and a draft memorandum of appeal.
4. The Respondents in opposition to the application filed a replying affidavit dated 16/10/2025 sworn by the 1st Respondent, Nicholas Kariuki and deposed that it is not true that the Applicants were not served with a copy of the judgement because, with the advent of electronic filing and all Courts having gone online, judgements and rulings are uploaded in the electronic filing portal once delivered and before a matter is closed in the portal. He averred that the trial Court upon delivering the judgement, it caused a copy to be uploaded in the portal on 11/07/2025 and thus the judgment was accessible to their respective advocates.
5. He averred that in addition to that, when the trial Court subsequently amended the judgement, a copy of the amended judgment was sent via email to their respective advocates' emails hence, the Applicants and their advocates had notice and access to the judgement immediately and within time. He averred further, that there has been no plausible explanation for the delay in filing the appeal and as such, the delay is unreasonable and unexplained. He contended that an applicant in an application for extension of time, must in addition to explaining the reason for delay demonstrate that the intended appeal is arguable.
6. He expressed that from a reading of the draft memorandum of appeal annexed, it does not raise any prima facie triable issue with a possibility of success on appeal given the evidence on record and the findings by the trial court in its judgment. He maintained that it is evident that the Applicants having been indolent and, in their failure to explain satisfactorily the reason of delay and, being that the intended appeal is not arguable, are not deserving of any indulgence by this Court in the exercise of its discretionary powers. He urged that the application was an afterthought and made in bad faith and as such, it should be dismissed with costs. He annexed a copy of an authority to plead and a copy of an email extract.
7. When the application came up for directions, the parties agreed to canvass it by way of written submissions. The Applicants filed submissions dated 27/02/2026 through the firm of Victor L. Andande and Company Advocates. They submitted that they had demonstrated that they have an arguable appeal as the trial court failed to consider key aspects of the evidence before it. That the dispute in the lower court arose from the issue of use and supply of water by rival factions of the parties' organization and that the whole water dispute arose from the leadership and membership wrangles which were the key focus at trial. They maintained that since the dispute related to water, this court has jurisdiction.
8. They submitted that under section 79G of the *Civil Procedure Act*, an appeal may be admitted out of time if sufficient cause is shown. They submitted that the length of delay was not too long as the judgement was delivered on 10/07/2025 and the Applicants moved the court on 29/08/2025. They cited the cases of Stecol Corporation Limited versus Susan Awuor Mudemb (2021) Eklr and Almas Hauliers Ltd versus Abdunlasir Abukar Hassan (2017) Eklr and urged the court to allow the application.
9. The Respondents filed submissions dated 14/11/2025 through the firm of Mutinda and Wambura Nthiga Advocates. They submitted that Order 50 Rule 6 of the Civil Procedure Rules and Section 16A of the *Environment and Land Court Act* vest this Honourable Court with discretion to enlarge



time, but such extension is not a right and must be justified to the satisfaction of the court. They cited the cases of Nicholas Kiptoo Korir Arap Salat versus IEBC and 7 others (2014) Eklr and Ndambuki and Another versus E-Gap Solutions Limited (2025) KEHC 3855 (KLR) which cited with approval the cases of Wambui versus Ngethe (2023) KEHC 18414 (KLR) which outlined the principles a court must consider in determining an application for extension of time to file an appeal out of time.

10. They submitted that the judgment was delivered on 10/07/2025 and the statutory period for filing an appeal lapsed on 11/08/2025, while the present application was filed on 30/08/2025, representing a delay of approximately nineteen (19) days. They contended that the Applicants' explanation for the delay, being failure to obtain proceedings, judgment and decree within time, is untrue as evidence shows they had access to the judgment as early as 11/07/2025 and 21/07/2025. The Respondents submitted that there is no explanation as to why the Applicants could not have prepared a memorandum of appeal using the judgment while awaiting the supply of proceedings and decree, and that their contention that the judgment has not been supplied is dishonest and fails to satisfactorily explain the delay.
11. The further submitted that whereas the dispute herein is stated to relate to the environment and land mostly on the aspect of water, by looking at the draft Memorandum of appeal annexed, the contention by the Applicants is mainly on elections of the Respondent's as leaders and their membership in Genesis (K) CBO. They averred that there is nothing in the draft memorandum that touches on environment and land and that this being a specialized court, its jurisdiction is only limited to matters land and environment. They maintained that the draft memorandum of appeal, having failed to impugn the judgment of the magistrate's court on matters of land and environment, fails to present an arguable appeal before this court.
12. Their position was that the Applicants intended appeal touches on elections and membership of the respondents which are matters within the purview of the High Court. The Respondents submitted that the application is intended to scuttle the operations of Genesis (K) CBO and that granting the orders sought would prejudice the Respondents and affect the entire membership of the organization. They maintained that the Applicants had failed to satisfactorily explain the delay and are therefore not entitled to the exercise of this Court's discretion in their favour.
13. I have considered the application, the responses filed thereto and the parties' submissions. The issue that arises for determination is whether the Applicants have established sufficient cause to warrant extension of time to file an appeal out of time.
14. On the issue of enlargement of time within which to file an appeal out of time, Section 79G of the [Civil Procedure Act](#) provides that:

“Every appeal from a subordinate court to the High Court shall be filed within a period of thirty days from the date of the decree or order appealed against, excluding from such period any time which the lower court may certify as having been requisite for the preparation and delivery to the appellant of a copy of the decree or order:

Provided that an appeal may be admitted out of time if the appellant satisfies the court that he had good and sufficient cause for not filing the appeal in time.”
15. The principles applicable to an application for enlargement of time were discussed by the Supreme Court in the case of Nicholas Kiptoo Arap Korir Salat v Independent Electoral and Boundaries Commission & 7 others [2014] eKLR 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 a basis to the satisfaction of the court;
 3. Whether the court ought to exercise the discretion to extend time, is a consideration to be made on a case to case basis;
 4. Whether there is reasonable reason for the delay, which ought to be explained to the satisfaction of the Court;
 5. Whether there would be any prejudices suffered by the respondent's if the extension was granted;
 6. Whether the application had been brought without undue delay; and;
 7. Whether in certain cases, like election petitions, public interest ought to be a consideration for extending time.
16. In the present case, it is not in dispute that judgment was delivered on 10/07/2025 and that the statutory period for filing an appeal lapsed on 11/08/2025. The present application was filed on 30/08/2025, thus occasioning a delay of approximately nineteen (19) days. In my view, such delay is not inordinate and would, in appropriate circumstances, be excusable. The Applicants have attributed the delay to failure to obtain certified copies of the proceedings, judgment and decree within time. However, the Respondents asserted that the judgment was uploaded onto the electronic filing system on 11/07/2025 and also placed before the court material demonstrating that a subsequent amended version was also shared with counsel via email on 21/07/2025. This position has not been sufficiently controverted by the Applicants.
17. It is trite that an appeal is initiated by filing a memorandum of appeal, and that the absence of certified proceedings or decree does not, of itself, prevent a party from lodging an appeal within time. The Applicants have not explained why, upon accessing the judgment, they could not prepare and file a memorandum of appeal while awaiting the other documents to be supplied to them. The explanation tendered for the delay is therefore not satisfactory.
18. On whether the intended appeal is arguable, I have carefully perused the draft memorandum of appeal. The Respondents contend that the issues raised therein primarily relate to the election of the Respondents as leaders and their membership in Genesis (K) CBO, and do not touch on matters of environment and land. On their part, the Applicants maintain that the dispute arose from the use and supply of water, thereby bringing it within the purview of this court. However, without the benefit of the trial court judgment, this court is unable to determine the nature of the dispute or definitively pronounce itself on the arguability of the intended appeal.
19. However, even assuming that the intended appeal raises arguable issues, that alone would not suffice to warrant the exercise of this court's discretion in favour of the Applicants. The Applicants were under a duty to satisfactorily explain the delay in filing the appeal within the prescribed time. As already observed, the explanation advanced namely, the failure to obtain certified copies of proceedings, judgment and decree has been effectively rebutted by the Respondents, who demonstrated that the judgment was available to the Applicants shortly after delivery through the electronic filing system and via email communication. The Applicants did not controvert this evidence or provide any further justification for their inaction during the period in question.



20. In the absence of a satisfactory and plausible explanation for the delay, this court is unable to find that the Applicants have established good and sufficient cause as required under Section 79G of the *Civil Procedure Act*.
21. In the circumstances, I find that the Notice of Motion application dated 29/08/2025 is devoid of merit. It is hereby dismissed with costs to the Respondents.
22. Orders accordingly.

DATED, SIGNED AND DELIVERED AT EMBU THIS 19TH DAY OF MARCH, 2026.

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HON. E.C CHERONO

JUDGE

ENVIRONMENT AND LAND COURT

In the presence of;

M/S Wambura for the Respondent

Applicant/Advocate-absent

Diana Kemboi C/A

