

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT
BUNGOMA
ELC MISC. APPLICATION NO. E042 OF 2025

ISAAC JUMA WANJALA
.....PLAINTIFF

VERSUS

FRANCIS WACHOCHO BARASA.....1ST
DEFENDANT

JOSEPH JUMA WEPUKHULU.....2ND
DEFENDANT

RULING

The Applicant filed the application dated 11/11/2025 seeking leave for the firm of Situma and Co. Advocates to act for him in place of H.P Wamalwa & Co. Advocates. He also sought leave to file an appeal out of time against the judgment delivered by Hon. D.K. Onkunya on 10/9/2025 in Kimilili SPM ELC Case No. E026/2022. He sought to file and serve the memorandum of appeal and record of appeal out of time.

The grounds on which the application was made are that the Learned Magistrate dismissed the Applicant's suit for failure to prove his case and after the delivery of the judgment, the Applicant instructed his former advocate to lodge an appeal on 11/9/2025 and paid a deposit towards the legal fees. However, his

former advocate failed to lodge the appeal or request for proceedings despite reminders by the Applicant.

The Applicant swore the supporting affidavit and annexed copies of the judgment, receipts issued by H.P Wamalwa & Co. Advocates dated 11/9/2025, receipt issued by Aventura Business Centre Kimilili on 6/10/2025 upon payment of Kshs. 20,000/= on account of file E026 of 2022. He also annexed the draft of memorandum of appeal together with a letter dated 3/11/2026 seeking certified copies of the proceedings from the trial court.

The 1st Respondent swore the replying affidavit in opposition to the application and pointed out that one of the receipts which the Applicant relied on was issued by Aventura Business Centre and not his previous advocate. According to the Respondent, this raised doubt as to the payment of the legal fees. He urged that the delay of over 60 days from the date the judgment was delivered was not explained and that he had taken steps to implement the judgment of the trial court.

The court directed parties to file written submissions, which it has read and considered. The Applicant submitted that the delay was not inordinate and he took all the necessary steps and diligently followed up the matter. He added that if the application were denied, he would suffer substantial loss and would be denied the right to heard on his appeal.

The Respondents submitted that the Applicant had not demonstrated diligence and that he had failed to show that his former counsel was at fault. They urged that the Applicant was

seeking to reopen litigation which will prejudice the Respondents who were in the process of implementing the decree from the trial court.

The issue for determination is whether the court should grant the Applicant leave to lodge an appeal out of time. The Applicant blames his former advocate for failing to lodge the appeal, and produced evidence to show that a day after the judgment was delivered he paid H.P Wamalwa & Co. Advocates of Kshs. 10,000/= as legal fees on 11/9/2025, which presumably was in furtherance of the instructions to lodge an appeal. The second receipt dated 6/10/2025 issued by Aventura Business Centre is not from the Applicant's previous advocates but the court notes that it refers to the case number of the suit before the trial court. The court is satisfied with the reasons advanced by the Applicant for the failure to lodge an appeal within time. The delay is not inordinate.

The Applicant is granted leave to file his appeal against the decision made in Kimilili SPM ELC Case No. E026 of 2022 within 14 days of the date of the ruling. Prayer no. 2 of the application dated 11/11/2025 is also allowed. The Respondent is awarded the costs of the application.

Delivered virtually at Bungoma this 11th day of March 2026.

K. BOR
JUDGE

No appearance for the parties

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