



Bichanga v Angwenyi (Environment and Land Miscellaneous Case E001 of 2026) [2026] KEELC 2369 (KLR) (29 April 2026) (Ruling)

Neutral citation: [2026] KEELC 2369 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYAMIRA
ENVIRONMENT AND LAND MISCELLANEOUS CASE E001 OF 2026
DO OHUNGO, J
APRIL 29, 2026**

BETWEEN

AGNES BICHANGA APPLICANT

AND

JOHNSON ARANGA ANGWENYI RESPONDENT

RULING

1. By Notice of Motion dated 29th December 2025, the Applicant is seeking the following orders:
 - i. That this Application be certified urgent and the same be heard ex-parte in the first instance.
 - ii. That leave be granted to the Applicant to appeal out of time against the ruling delivered by Hon. Ombija (Senior Resident Magistrate) on 25/09/2024 vide Keroka Misc. Civil Application number 33 of 2010- Johnson Angwenyi vs Agnes Bichanga.
 - iii. Costs of the application be in the cause.
2. The application is supported by an affidavit sworn by the Applicant on 29th December 2025, and is based on the following grounds:
 1. That ruling was delivered on 25/09/2024 vide Keroka Misc. Civil Application number 33 of 2010 - Johnson Angwenyi vs Agnes Bichanga disallowing the applicant's preliminary objection dated 2/09/2024 and thereafter an order entered in favor of the respondent allowing eviction of the Applicant from her land parcel Nyaribari Chache/Nyantura/894.
 2. That although 30 days stay of execution was granted, the Respondent who is an elderly citizen aged 80 years was not advised in time by his (sic) former counsel and also did not have the financial means to lodge an appeal thus occasioning delay.



3. That by the time she sourced for the required amount for obtaining proceedings, ruling, filing a Memorandum of Appeal and also securing an advocate to represent her, the period provided by law had already lapsed.
 4. That upon perusal of the copy of ruling, she is dissatisfied and aggrieved by the ruling by Hon. Ombija (Senior Resident Magistrate) disallowing the preliminary objection that had raised the issue of limitation of time and has thus instructed his (sic) advocates to prefer an appeal.
 5. The intended appeal raises substantial issues of law and is not founded in vain.
 6. That the Respondent stands to suffer no prejudice if the orders sought are granted.
 7. That the orders sought are in the best interest of justice.
 8. That the Applicant now prays that this honourable court grants him leave to appeal out of time.
3. The Applicant deposed in the supporting affidavit that she is an elderly citizen aged 80 years and a widow thus financially constrained. That she was aware that the ruling sought to be appealed against which was delivered on 25th September 2024 and that although thirty days stay of execution was granted, she did not have the financial capability to lodge an Appeal thus occasioning delay.
 4. That by the time she sourced for the required funds to obtain proceedings and ruling and to instruct an advocate to file an appeal, the period provided by law had lapsed. She added that she is dissatisfied with the ruling, that the intended appeal raises substantial issues of law, and that the Respondent would suffer no prejudice if the orders sought were granted.
 5. Although evidence of service upon the Respondent was availed, the Respondent neither filed a response nor attended the hearing of the application.
 6. I have carefully considered the application and the supporting affidavit. The sole issue for determination is whether the orders sought should issue.
 7. The Applicant is seeking leave to file an appeal out of time against an order made by the Subordinate Court on 25th September 2024. 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. Section 16A (2) of the Act gives this Court jurisdiction to admit an appeal out of time if the Appellant satisfies the court that she had a good and sufficient cause for not filing it in time.
 8. The Supreme Court stated as follows in the case of *Nicholas Kiptoo Arap Korir Salat v Independent Electoral and Boundaries Commission & 7 others* [2014] eKLR, 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; ...
9. The application is unopposed. Nevertheless, the burden of laying a basis to the satisfaction of the Court remains that of the Applicant. She must discharge it, opposition or no opposition.
 10. The present application was filed on 7th January 2026, which was over one year and three months since the order sought to be appealed against was made. I have no doubt in my mind that such a delay is unreasonable.
 11. The Applicant's explanation for the delay is that she is an elderly citizen aged 80 years and a widow thus financially constrained. She also contends that the period for filing an appeal had lapsed by the time she sourced for the required funds.
 12. The Applicant has not annexed anything to demonstrate either her age or her financial means. She was aware of the delivery of the ruling since as the annexed copy of the ruling shows, it was delivered in the presence of her advocate, and she even obtained thirty days stay. She has not adequately explained what action she took either within the thirty days or soon after their expiry.
 13. Although the Applicant has stated that the period for filing an appeal had lapsed by the time she sourced for the required funds, she has not offered any specifics as to the quantum of funds that she required and the actual date when she secured those funds. A party seeking equitable relief is under a duty to lay all her cards on the table.
 14. Additionally, the Applicant has laid blame at the feet of her former advocates by contending that the said advocates did not advise her in time. The suggestion there is that there was advise but it came too late. Again, no details are offered as to when the advise was given, even if late.
 15. The Applicant has fell short of satisfying the principles for extension of time. I am not satisfied by the explanations given and I find no basis upon which to exercise discretion in her favour.
 16. I find no merit in Notice of Motion dated 29th December 2025. I dismiss it with no order as to costs.

DATED, SIGNED, AND DELIVERED AT NYAMIRA, THIS 29TH DAY OF APRIL 2026.

D. O. OHUNGO

JUDGE

Delivered in the presence of:

Mr Nyambane for the Applicant

No Appearance for the Respondent

Court Assistant: B Kerubo

ELCLMisc. No. E001 of 2026 (Nyamira) Page 2 of 2

