



Malombo t/a OM Robinson & Company Advocates v Kainembabazi (Sued as the Executrix of the Estate of John Wycliffe Rutagyemwa Kazzora - Deceased) (Civil Appeal E066 of 2025) [2026] KEELC 2416 (KLR) (30 April 2026) (Ruling)

Neutral citation: [2026] KEELC 2416 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
CIVIL APPEAL E066 OF 2025**

**JO OLOLA, J
APRIL 30, 2026**

BETWEEN

**ROBINSON ONYANGO MALOMBO T/A OM ROBINSON & COMPANY
ADVOCATES APPELLANT**

AND

**MUSERURE SUZANNE KAINEMBABAZI (SUED AS THE EXECUTRIX
OF THE ESTATE OF JOHN WYCLIFFE RUTAGYEMWA KAZZORA -
DECEASED) RESPONDENT**

RULING

1. By the Notice of Motion dated 25th September 2025, Robinson Onyango Malombo trading as O.M. Robinson & Company Advocates (the Appellant/Applicant) prays for the following orders:
 1. Spent;
 2. That this Honourable Court be pleased to grant leave to the Appellant to appeal the Ruling of Deputy Registrar delivered on 11th April, 2025 outside the prescribed time;
 3. That this Honourable Court be pleased to admit Memorandum of Appeal dated 25th September 2025 filed out of prescribed time upon grant of prayer (2) above; and
 4. That cost of the application be provided for.
2. The application which is supported by an affidavit sworn by the Applicant is premised on grounds inter alia, that:
 - a. There is a valid money decree issued on 13th March 2025 by this Court in the appealed decision against the deceased's estate. The decree has not been set aside or vacated or varied. There is no appeal intended or filed against the Judgment;



- b. The decree-holder commenced execution by way of attaching immovable properties i.e MN/1/1108 CR. 58781 and MN/1/1509 CR 58782 registered in the deceased's name;
 - c. The appellant has since withdrawn an application for review filed in the appealed decision;
 - d. The Appellant then filed a procedural ex-parte application dated 26/3/2025 which sought for prohibitory/inhibition order in order to complete attachment by dint of express provisions of Order 22 Rule 10, 48 & 68 of the Civil Procedure Rules 2010;
 - e. That to the Appellant's dismay, the Learned Deputy Registrar disallowed the said application vide a Ruling delivered on 11 /04/2025;
 - f. The Appellant thereafter immediately filed an application for review of the Ruling delivered on 11/04/2025;
 - g. During the pendency of the application for review, the Appellant filed another application which sought in the main recusal of the DR and stay of writing of the Ruling;
 - h. The application for recusal was heard culminating to delivery of Ruling on 27th August, 2025 in which the DR refused to recuse himself;
 - i. Upon rendering the Ruling, the DR orally directed that the application for review be presented before another DR;
 - j. That the Appellant intends to appeal the decision of the DR made on 11/4/2025;
 - k. The delay in filing the intended Appeal is not inordinate;
 - l. There is no known attachable assets belonging to the estate to satisfy the decretal sum; and
 - m. It is in the interest of justice hat the Court grant leave to appeal and admit the Memorandum of Appeal filed outside prescribed time.
3. Musherure Suzzane Kainembabazi (sued as the Executrix of the Estate of John Wycliffe Rutagyemwa Kazzora (deceased) did not enter appearance or file her response herein.
 4. I have carefully perused and considered the application, the Affidavit in Support thereof as well as the annexures thereto. The Respondent did not enter appearance and as such the application proceeded unopposed.
 5. By his application before the Court, the Applicant has sought for orders that this Court be pleased to grant him leave to appeal the Ruling of the Deputy Registrar as delivered herein on 11th April 2025 outside the prescribed time. In addition, the Applicant prays for an order that this Court admits the Memorandum of Appeal dated 25th September 2025 filed outside the prescribed time.
 6. In respect of appeals, Section 79G of the *Civil Procedure Act*, Cap 21, provides as follows:

“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.”



7. In the Supreme Court decision in Nicholas Kiptoo Salat –vs- Independent Electoral and Boundaries Commission & 7 Others (2014) eKLR, it was held that:

- “ 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; and
7. Whether in certain cases, like election petitions, public interest should be a consideration for extending time.”

8. In the matter herein, the Applicant intends to appeal against a decision of the Deputy Registrar of this Court delivered on 11th April 2025. It was apparent from the record that some four (4) days after the Ruling was delivered, the Applicant filed an application dated 15th April 2025 seeking for a review of the decision by the same Court.

9. It was also apparent that after the application was heard and reserved for a Ruling, the Applicant changed his mind and sought to have the Learned Deputy Registrar of the Court to recuse himself from the matter.

10. Having looked at the circumstances surrounding the application and even though the application arrived about five (5) months after the Ruling was delivered, I was persuaded that the delay in filing the application has been explained to the satisfaction of the Court and that the same arose out of factors that were beyond the Applicant’s control.

11. In the premises, I am persuaded that there is merit in the Motion dated 25th September 2025. I allow the same in terms of Prayers 2 and 3 thereof. The Applicant has 14 days from today to lodge the Memorandum of Appeal.

12. I make no order as to costs.

RUING DATED, SIGNED AND DELIVERED IN OPEN COURT AND VIRTUALLY AT MOMBASA THIS 30TH DAY OF APRIL, 2026.

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J.O. OLOLA

JUDGE

In the presence of:

Ms. Firdaus Court Assistant.

Ms. Malombo holding brief for Mr. Malombo Advocate for the Appellant



No Appearance for the Respondent

