



Nabea (Suing as the Legal Representative of the Estate of Andriano Ntongai M’Mauta - Deceased) v Kiriama & 3 others (Environment and Land Miscellaneous Case E058 of 2025) [2026] KEELC 2463 (KLR) (28 April 2026) (Ruling)

Neutral citation: [2026] KEELC 2463 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT AND LAND MISCELLANEOUS CASE E058 OF 2025**

**BM EBOSO, J
APRIL 28, 2026**

BETWEEN

ROSE MUKOMAU NABEA (SUING AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF ANDRIANO NTONGAI M’MAUTA - DECEASED) APPLICANT

AND

**JOHN KITHINJI KIRIAMA 1ST RESPONDENT
MUTEMBEI MURTIHI M’ERUAKI 2ND RESPONDENT
MORRIS MURITHI 3RD RESPONDENT
ATTORNEY GENERAL (SUED ON BEHALF OF THE DISTRICT LAND ADJUDICATION AND SETTLEMENT OFFICER – IGEMBE) 4TH RESPONDENT**

RULING

1. Falling for determination in this ruling is the notice of motion dated 18/12/2025, brought by Rose Mukomau Nabea (suing as the legal representative of the estate of the late Andriano Ntongai M’Mauta). Through the motion, the estate of the late M’Mauta sought an order enlarging the time for lodging an appeal against the Judgment of the Senior Principal Magistrate Court at Maua [Hon C K Obara – SPM], dated 23/10/2023. The key question for determination in the ruling is whether the said application meets the criteria for enlarging time for lodging an appeal to this court.
2. The application was premised on the grounds outlined in the motion and in the applicant’s supporting affidavit dated 18/12/2025. It was canvassed through written submissions dated 27/2/2026, filed by Ms Maitai Rimita & Co Advocates. The case of the applicant is that she was a plaintiff in Maua CMC E & L Case No 150 of 2018, in which she sought, among other reliefs, a declaration that the subdivision



of parcel number 166 within Amwathi/Mutuati IIA Adjudication Section into parcel numbers 7729 and 8111 and the subsequent registration of the said parcels into the names of the 1st, 2nd and 3rd respondents were fraudulent and illegal; an order annulling the registrations; and an order evicting the 1st, 2nd and 3rd respondents from the said parcels.

3. The Senior Principal Magistrate Court at Maua heard the said suit and rendered a judgment on 23/10/2023 in which it found that the three parcels legitimately belonged to the 1st, 2nd and 3rd respondents respectively. She is aggrieved by the said judgment. She is facing death threats for pursuing this claim and this is the reason for her failure to lodge an appeal within the prescribed time. She was in hiding prior to and after trial. Threats against her increased “when there was wind” that she wanted to appeal against the judgment.
4. The applicant faults the trial court for failing to consider all the issues that were raised in the matter and contends that she has an arguable appeal with high chances of success on both points of law and facts.
5. The 1st, 2nd and 3rd respondents opposed the application through a replying affidavit dated 6/2/2026. It is the respondents’ case that the application is misconceived, frivolous, vexatious and an abuse of the court process and that it is intended to prevent them from enjoying the fruits of the judgement. They contend that the applicant is guilty of inordinate delay in making the plea for enlargement of time and has not given any plausible explanation for the delay of over 2 years. The respondents add that the alleged complaint relating to a threat to kill that was lodged on 6/12/2016 vide OB 11/6/12/2016. They assert that it was a false complaint.
6. The three respondents add that pursuant to the applicant’s malicious complaint, they were summoned before the Director of Criminal Investigations - Laare, and parties were advised to file their claim before the Environment and Land Court. They state that the allegation by the applicant that they evicted her from the suit parcels is false because she has never occupied nor utilized Amwathi/Mutuati II/7729,8019 and 8111. The respondents further state that they purchased their respective parcels of land from the applicant’s late father, who transferred the land to them and granted them vacant possession during his lifetime.
7. The three respondents contend that they have extensively developed their respective parcels and have utilized the parcels for a long period. They add that the appeal is hopeless, frivolous, vexatious and an abuse of the court process. They term the application an afterthought and urge the court to dismiss it in its entirety.
8. The court has considered the application; the response to the application; and the submissions that were tendered on the application. The single issue that falls for determination in this ruling is whether the application meets the criteria for enlargement of time for lodging an appeal in this court.
9. The limitation period for lodging an appeal in this court against judgments of lower courts is contained in Section 16A of the *Environment and Land Court Act* and Section 79G of the *Civil Procedure Act*. The frameworks in the two statutes provide for a limitation period of 30 days from the date of delivery of judgment. The two frameworks vest in this court discretionary jurisdiction to enlarge the limitation period. The legislated guiding principle in the two frameworks is that the discretionary jurisdiction should be exercised on the basis of good and sufficient cause.
10. The general jurisprudential principles that guide our courts whenever invited to exercise the above jurisdiction were outlined by the Supreme Court of Kenya 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 was not a right of a party. It was an equitable remedy that was only available to a deserving party at the discretion of the court;



2. A party who sought extension of time had the burden of laying a basis for it to the satisfaction of the court;
 3. Whether the court ought to exercise the discretion to extend time, was a consideration to be made on a case to case basis;
 4. Whether there was a reasonable reason for the delay, which ought to be explained to the satisfaction of the court;
 5. Whether there would be any prejudice suffered by the respondents 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.”
11. In *Mukora Mwangi v Charles Gichina* – Civil Application No. Nai 255 of 1997, the Court of Appeal summed up the relevant principle as follows:-

“It is now well settled that the decision whether or not to extend the time for appealing is essentially discretionary. It is also well-settled that, in general, the matters which this court takes into account in deciding whether to grant an enlargement of time are: first, the length of the delay; secondly, the reason for the delay; thirdly (possibly), the chances of the appeal succeeding if the application is granted; and fourthly, the degree of prejudice to the respondent if the application is granted.”

12. What was the length of delay? The impugned judgment was rendered on 23/10/2023. The limitation period lapsed on 23/11/2023. The plea for enlargement of time was filed on 19/12/2025. This is a period of two years, one month and twenty-seven days. The law provides for a limitation period of 30 days. This is, therefore, clearly inordinate delay.
13. The explanation tendered by the applicant is that there were threats to her life. The evidence she has tendered to demonstrate threats to her life and to explain her failure to initiate an appeal within the prescribed limitation period is a letter dated 23/1/2017, addressed to the DCIO, Igembe, which reads as follows:

Laare Police Station
O. Box 250
Laare
23/1/2017
To,
Dcio
Igembe North
O. Box 250
Laare
Threatening To Kill
Rose Mukomaua Nabea



Kindly help the bearer of this note. She has reported the above matter at Kabachi Police Post vide OB 11/6/2016. The perpetrators she has accused of having fraudulently acquired her land have threatened to kill her that they continue occupying her land plot number 166 Amwathi Mutuati II Adjudication Section.

Signed.

14. On its face, the above letter was authored on 23/1/2017. The suit in the lower court was filed in the Environment and Land Court at Meru on 16/6/2017 and was transferred to Maua Chief Magistrate Court in 2018. It was registered at Maua Chief Magistrate Court as Maua CMC E & L Case No 150 of 2018. It is therefore clear that the letter which the applicant is relying on predates the litigation that culminated into the impugned judgment. It also predates the impugned judgment. In the circumstances, the said letter cannot be considered to form the basis for the applicant's failure to utilize the appeal mechanism availed to her by the law. She was able to prosecute her claim in the lower court subsequent to the alleged threat. She has not explained what prevented her from lodging an appeal on time in 2023. In the absence of a proper explanation, the finding of the court in terms of the explanation tendered is that the applicant has failed to tender a convincing and bona fide explanation for the inordinate delay of over 2 years.
15. Has the applicant demonstrated that she has an arguable appeal? The applicant faulted the trial court for failing to consider all the issues that were raised in the matter. She did not, however, exhibit the pleadings that informed the trial and the determination in the lower court. She did not exhibit the evidence that was tendered in the trial court. In the absence of the above critical evidence, the court has no basis upon which to evaluate the applicant's appeal. Subsequently, applicant cannot be said to have demonstrated that she has an arguable appeal.
16. On the degree of prejudice, it does emerge from the judgment of the trial court that the late M'Mauta ignored the appeal mechanism under the *Land Adjudication Act*. His decision not to challenge an adjudication award culminated in the registrations of the 1st, 2nd and 3rd respondents as proprietors of the three parcels that were the subject matters of litigation in the lower Court. Secondly, it does emerge from the reliefs sought in the lower court by the applicant that the 1st – 3rd respondents have been in possession of the suit parcels. For more than two years, they have lived knowing that the land dispute was resolved by the trial court with finality in 2023. It would be highly prejudicial to them to revive the dispute after more than 2 years of unexplained disinterest on the part of the applicant.
17. For the above reasons, the finding of this court on the single issue in this application is that, the application does not meet the criteria for enlargement of time for lodging an appeal in this court. Consequently, the notice of motion dated 18/12/2025 is rejected and dismissed for lack of merit.
18. In line with the general principle in Section 27 of the *Civil Procedure Act*, the ex-parte applicant [the estate of the late M'Mauta] shall bear costs of the miscellaneous application [suit].

DATED, SIGNED AND DELIVERED AT MERU THIS 28TH DAY OF APRIL, 2026.

B M EBOSO [MR]

JUDGE

