



**Ndong’iora v Mwaniki (Sued on behalf of Estate of the late Mwaniki Mbiti) & 2 others (Environment and Land Miscellaneous Application 31 of 2022) [2026] KEELC 2631 (KLR) (28 April 2026) (Ruling)**

Neutral citation: [2026] KEELC 2631 (KLR)

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT EMBU**  
**ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION 31 OF 2022**  
**A KANIARU, J**  
**APRIL 28, 2026**

**BETWEEN**

**HARRISON NJOKA NDONG’IORA ..... APPLICANT**

**AND**

**EPHRAIM NJERU MWANIKI (SUED ON BEHALF OF ESTATE OF THE LATE MWANIKI MBITI) ..... 1<sup>ST</sup> RESPONDENT**

**NAOMI MBANDI MWANIKI ..... 2<sup>ND</sup> RESPONDENT**

**ALFRED NJERU MWANIKI ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

1. Before me for determination is a motion on notice dated 14.11.2022 filed in court on even date. It is expressed to be brought under Sections 3A and 95 *Civil Procedure Act*, Sections 27 and 28 of the Limitations of Actions Act, Order 50 Rule 6 of Civil Procedure Rules, and all other enabling provisions of law. It has two prayers as follows:
  1. The applicant be granted leave to file out of time.
  2. That costs be in the cause.
2. The application is anchored on grounds, inter alia, that the applicant applied for proceedings after judgement was delivered by the lower court, Siakago, in Civil Suit No. 87 of 2022, intending to file an appeal; that the proceedings were supplied to advocate Macharia Muraguri instead of him; that he continued requesting for proceedings together with a certificate of delay; that the respondent intends to implement the judgement; and that the intended appeal has overwhelming chances of success. The appeal was also said to be arguable and the delay in filing it was attributed to factors beyond the applicant’s control.



3. The supporting affidavit that came with the application reiterates and amplifies the grounds stated above and further blames the applicant's advocate on record at the time for failing the applicant. It is also deposed that the respondents will not suffer prejudice if the application is allowed.
4. The application was responded to via a replying affidavit dated 7.12.2022 and filed on 8.12.2022. The deponent is EPHRAIM NJERU MWANIKI, the 1<sup>st</sup> respondent. In the response, the applicant is faulted for not explaining why the proceedings were supplied to advocate Macharia. He was also faulted for not following up with Macharia. Further, the application herein was said to be devoid of merit and meant to divert and delay the course of justice. The reasons for the delay in filing the appeal were said to be based on falsehoods and the appeal intended to be filed was said to have no chance of succeeding.
5. The application was canvassed by way of written submissions. The applicant's submissions are dated 22.10.2024. After stating the facts in a concise way, the applicant cited the cases of Nicholas Kiptoo Arap Korir Salat vs IEBC & 7 others [2014] eKLR, and Pul Wanjohi Mathenge vs Duncan Gichane Mathengi [2013] eKLR among others. The applicant, submitted that the court needs to consider whether a sufficient basis is laid for extension of time, whether there is good reason for the delay, whether the respondents will suffer prejudice, and whether the application is brought timeously. It was noted that though the discretion of the court is unfettered, it has to be exercised judiciously.
6. According to the applicant, his application is a deserving one and should therefore be allowed.
7. The respondents' submissions are dated 7.11.2023 and were filed in court on the same date. The applicant was faulted for blaming his counsel, Momanyi, and another counsel, Macharia Muraguri, for the predicament he finds himself in relation to the filing of his appeal. He was faulted too for failing to show any tangible steps that he himself has taken to follow up his matter. The respondents submitted that a case belongs to a litigant and is the litigant's duty to regularly check on its progress.
8. It was further submitted that lack of resources is not a valid reason for failing to file an appeal in time. The case of Francis Mwai Karani vs Robert Mwai Karani, Civil Application No. Nai 246 of 2006 was cited to drive the point home.
9. The intended appeal was also said to have no chances of success as the applicant is essentially re-litigating what has already been determined by courts of competent jurisdiction
10. Ultimately, the court was urged to dismiss the application with costs to the respondents.
11. I have considered the application filed, the response made, and the rival submissions. The principles to consider in order to decide whether or not to extend time to file an appeal were well stated in the case of Thuita Mwangi vs Kenya Airways Ltd. [2003] eKLR. They include the period of delay, the reason (s) for the delay, the arguability of the appeal, the degree of prejudice which could be suffered by the respondents if the extension is granted, the importance of compliance with time limits to the particular litigation in issue, and finally, the effect, if any, on the administration of justice or the public interest if any is involved.
12. Both sides have made reference to some of the principles as culled from other decided cases. But while the applicant believes that the principles should be construed in his favour, the respondents take a contrary view.
13. In Trade Bank Ltd (in liquidation) vs L. Z. Engineering Construction Company Ltd. & others: Civil Application No. 282 of 1998, Nairobi; [1997] eKLR 846 (CAK) the court pointed out that in an application for extension of time, pleadings and judgement must be placed before the judge to show that he is not being asked to extend time for filing a frivolous appeal to the prejudice of the respondents.



In this application now under consideration, the applicant never deemed it necessary to place before court the pleadings and the judgement. The applicant submitted that he has a good appeal which has good chances of success. The respondents on the other hand submitted that the intended appeal has no chances of success at all.

14. Without the pleadings and the judgement, the court does not know what or who to believe. But the duty to make the pleadings and judgement available was that of the applicant and it is the applicant therefore who should face the consequences of not making them available.
15. I also appreciate that generally, it is important to consider whether the application promotes the overriding objective in civil cases which require that the court should aim at achieving the just, expeditious, proportionate, and affordable resolution of disputes. The circumstances prevailing herein do not persuade me that allowing the application fosters these noble objectives.
16. The upshot, in light of the foregoing, is that the application herein is found unmeritorious and dismissed with costs to the respondents.

**RULING DATED, SIGNED AND DELIVERED IN OPEN COURT AT KITUI THIS 28<sup>TH</sup> DAY OF APRIL, 2026 PURSUANT TO NOTICE DATED 21/4/2026.**

In the presence of,

Court Assistant - Musyoki

Applicant - absent

Respondent – absent

No counsel present

**A. KANIARU**

**JUDGE- ENVIRONMENT & LAND COURT, KITUI**

