



**Wekesa & another v Kegode (Environment and Land Miscellaneous
Case E008 of 2025) [2025] KEELC 5488 (KLR) (23 July 2025) (Ruling)**

Neutral citation: [2025] KEELC 5488 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
ENVIRONMENT AND LAND MISCELLANEOUS CASE E008 OF 2025**

CK NZILI, J

JULY 23, 2025

BETWEEN

VIOLET NANJALA WEKESA 1ST PLAINTIFF

RASOAH KHANDI WANYAMA 2ND PLAINTIFF

AND

AGNES NEKESA KEGODE DEFENDANT

RULING

1. A party seeking to appeal to the High Court against a judgment or ruling of the lower court has to do so within 30 days from the date of the order or decree. Section 79(9) of the *Civil Procedure Act*, as read together with Section 16A (2) of the *Environment and Land Court Act*, provides that a court may allow the filing of an appeal out of time, where there are good and sufficient reasons for not filing it within time.
 - a. In *Nicholas Kiptoo Korir Arap Salat v Independent Electoral and Boundaries Commission & Others* [2014] eKLR, the Supreme Court set out some of the principles to consider as follows:
 - a. That extension of time is not a right but an equitable discretion remedy to deserving parties only.
 - b. The burden of proof on the basis is on the party to the satisfaction of the court.
 - c. The discretion is to be exercised on a case-by-case basis.
 - d. Reasonable reasons for the delay should be explained to the satisfaction of the court.
 - e. Prejudice to the opposite party has to be considered.
 - f. The application must be made without unreasonable delay.



2. The application before me is dated 4/4/2025. The lower court ruling sought to be appealed against was delivered on 26/9/2024. The reasons for not appealing on time are that the 1st applicant, who acted on behalf of the 2nd applicant, was taken ill shortly after the ruling, became incapacitated physically and financially and hence was unable to give sufficient instructions to counsel until March 2025.
3. The applicants state that they bought the suit land from the respondent on 26/5/2006 and 24/8/2013, took vacant possession and have developed the same. The applicants aver that the effect of the ruling is to stay their case pending hearing. The applicants have attached copies of the authority to plead, draft memorandum of appeal, copies of the title deed and sale agreements, photos showing developments on the land, letter from the County Commissioner cancelling the mutation forms, injunction order and ruling dated 26/9/2024 as annexures VNW-1-6, respectively.
4. The bottom line is that the applicants urge the court to allow them to challenge the ruling staying their suit at the lower court, until ELC No. E022 of 2022 is heard and determined.
5. The court has looked at the reasons for the delay. It is alleged that the 1st applicant was taken ill shortly after the ruling. Medical reports to sustain that claim are not attached. The delay of close of 8 months has not been explained at all. The court notes that the application leading to the ruling sought to have the applicants' claim struck out. Instead of such drastic measures, the trial court opted to stay the suit on account of a superior order by the High Court in JR No. 17 of 2022.
6. In my considered view, the intended appeal, even if it were admitted out of time, would serve no purpose. See *Anne Wanjiku Kibeh v Clement Kungu Waibara & Another* [2020] eKLR and *Stanley Kangethe Kinyanjui v Tony Keter & Others* [2013] KECA 378 (KLR).
7. The application dated 4/4/2025 is dismissed with no order as to costs.

RULING DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT KITALE ON THIS 23RD DAY OF JULY 2025.

In the presence of:

Court Assistant - Dennis

Applicant in person present

HON. C.K. NZILI

JUDGE, ELC KITALE.

