



REPUBLIC OF KENYA



**KENYA LAW**  
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**Ngetich & another v Soi (Environment and Land Miscellaneous Application  
E001 of 2025) [2025] KEELC 5329 (KLR) (17 July 2025) (Ruling)**

Neutral citation: [2025] KEELC 5329 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KERICHO  
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E001 OF 2025  
LA OMOLLO, J  
JULY 17, 2025**

**BETWEEN**

**PAUL KIPNGENO NGETICH ..... 1<sup>ST</sup> APPLICANT**

**JOSEPH LANGAT ..... 2<sup>ND</sup> APPLICANT**

**AND**

**PRISCILLA CHEPKEMOI SOI ..... RESPONDENT**

**RULING**

**Introduction.**

1. This ruling is in respect of the Applicants Notice of Motion application dated 11<sup>th</sup> February, 2025. It is expressed to be brought under Sections 1A, 1B, 3A & 79G of the *Civil Procedure Act*, Order 50 Rule 6 and Order 51 Rule 1 of the Civil Procedure Rules.
2. The application seeks the following orders;
  - a. Spent
  - b. This Honourable Court be pleased to enlarge time within which to file the Memorandum of Appeal and upon such enlargement the annexed draft Memorandum of Appeal be deemed as properly filed.
  - c. This Honourable Court upon allowing prayer 2 above be pleased to allow the firm of Kiplenting and Company Advocates to come on record for the intended Appellants. (sic)
  - d. This Court be pleased to issue any other orders it may deem appropriate in the circumstances.
  - e. The costs of this application be provided for.



3. The application is based on the grounds on its face and the supporting affidavit of one Paul Kipngeno Ngetich sworn on 11<sup>th</sup> February, 2025.

### **Factual Background.**

4. On 13<sup>th</sup> March, 2025 the Court issued directions that the application under consideration be heard by way of written submissions.
5. On 24<sup>th</sup> April, 2025, the application was mentioned for submissions and on 7<sup>th</sup> May, 2025 it was reserved for ruling.

### **The Applicants Contention.**

6. The supporting affidavit is sworn by the 1<sup>st</sup> Applicant. He avers that he has the authority of the 2<sup>nd</sup> Applicant to swear the affidavit.
7. It is his contention that the Court in Kericho CM ELC Case No. E022 of 2020 delivered its judgement on 5<sup>th</sup> November, 2024 and held that Plot No. 104 Kapkatet belonged to the 1<sup>st</sup> Respondent. He adds that the said plot was allegedly also registered as plot number 123.
8. He further contends that he has been advised by his Advocates on record that appeals from the subordinate Court to the High Court lie as of right and must be filed within thirty days.
9. It is his contention that he intended to file his Memorandum of Appeal on 6<sup>th</sup> December, 2024 but he failed to do so which necessitated the filing of the application under consideration.
10. It is also his contention that his previous Advocates made a request for typed proceedings on 8<sup>th</sup> November, 2024 to enable them prepare a record of appeal but the typed proceedings were not supplied to them.
11. It is further his contention that his previous Advocates on record filed a Notice of Appeal instead of a Memorandum of Appeal contrary to the provisions of the law.
12. He contends that upon realizing that an appeal had not been filed, he opted to consult his present advocates on record which lead to further delays. He goes on to state that thereafter he instructed the firm of Kiplenting and Company Advocates who will be coming on record in place of F.C Bor & Company Advocates.
13. He also contends that he has been advised by his advocates on record that this Court can exercise its discretion and enlarge the time for filing an appeal.
14. He further contends that he is the owner of Plot No. 123 Kapkatet Market which he purchased sometime in the year 2002.
15. It is his contention that the judgement delivered by the Learned Trial Magistrate was in favour of the Respondent. The Respondent alleged ownership of Plot No. 104 Kapkatet Market which measures 0.075 Ha and the Court held that the said parcel was initially registered as Plot No. 123 which measures 0.1109 Ha and adds that this decision allowed the Respondent to occupy a portion of his (1<sup>st</sup> Applicant) land.
16. It is also his contention that he stands to suffer substantial loss unless the orders sought are granted. He adds that he has annexed to his affidavit in support of the application a draft Memorandum of Appeal.



17. It is further his contention that the Learned Trial Magistrate in his judgement delivered on 5<sup>th</sup> November, 2024 also issued an order that the register be rectified to have the Respondent registered as the owner of Plot No. 104 Kapkatet Market initially registered as Plot No. 123.
18. He contends that Plot No. 104 Kapkatet Market is non-existent and does not form part of the records of the Commissioner of Lands.
19. He also contends that the Respondent has already occupied a portion of his plot on the belief that Plot No. 104 was initially registered as Plot No. 123.
20. He further contends that he is facing eviction threats as the trial Court awarded the Respondent his entire parcel of land and yet the Respondent was only claiming a portion of it.
21. He ends his deposition by stating that the only prejudice the Respondent is likely to incur is the delay in implementing the decree of the trial Court which is lower compared to the loss he (1<sup>st</sup> Applicant) is likely to incur.

### **The Respondent's Response.**

22. The Respondent filed a Replying Affidavit on 13<sup>th</sup> March, 2025.
23. She deposes that she is the administrator of the estate of the late Kipkorir Soi who was the registered proprietor of Plot No. 104 Kapkatet Market. She goes on to state that he purchased the said plot on 18<sup>th</sup> July, 1991.
24. She also deposes that the late Kipkorir Soi passed on in the year 2011 and she filed Succession Cause No. 79 of 2012. She goes on to state that in the said succession cause, the suit parcel was listed among the assets of the deceased.
25. She further deposes that on 23<sup>rd</sup> October, 2020 the 1<sup>st</sup> Applicant in collusion with the 2<sup>nd</sup> Applicant trespassed on the suit parcel, fenced it and started constructing a toilet. She narrates that they were intent on developing the said land thereby interfering with her peaceful and quiet enjoyment.
26. It is her deposition that the Department of Survey and Physical Planning Kericho conducted a verification exercise where they discovered that there was an error in the numbering of the plots. She goes on to state that Plot No's 104 and 123 referred to one and the same plot.
27. It is also her deposition that the Director of Lands and Survey rectified the said error by registering Plot No. 104 in the 1<sup>st</sup> Applicant's name while plot No. 123 ceased to exist.
28. It is further her deposition that the 1<sup>st</sup> Applicant received a letter informing him of the said developments from the Director of Lands and Survey but he ignored it and continued to develop Plot No. 104 Kapkatet Market.
29. She deposes that on 23<sup>rd</sup> December, 2020 she filed a suit before the Kericho Chief Magistrate's Court seeking that the Court issues a declaration that plot No. 104 Kapkatet Market belongs to her to hold in trust for the beneficiaries of the estate of her deceased husband.
30. She also deposes that the Applicant (sic) insisted that Plot No. 104 and Plot No. 123 were distinct and yet the Director Lands and Survey in his letter dated 22<sup>nd</sup> September, 2020 stated that Plot No. 123 registered in the name of Kipkorir Soi be registered as Plot No. 104. She adds that the Director Lands and Survey also stated that Plot No. 123 ceased to exist.



31. It is the Respondent's deposition that the grounds put forth by the Applicants in seeking extension of time to file an appeal are flimsy and not sufficient.
32. She further deposes that Section 79G of the *Civil Procedure Act* provides that an appeal is to be lodged within thirty days. She goes on to state that the said provision of the law also provides that time can only be extended in compelling circumstances.
33. It is also her deposition that the Learned Trial Magistrate delivered his judgement on 5<sup>th</sup> November, 2024 and that on 8<sup>th</sup> November, 2024, the 1<sup>st</sup> Applicant filed a Notice of Appeal.
34. It is further her deposition that on 13<sup>th</sup> November, 2024 the 1<sup>st</sup> Applicant filed an application in the trial Court seeking orders of stay of execution of the judgement pending hearing and determination of the appeal lodged in the Environment and Land Court.
35. She deposes that on 21<sup>st</sup> January, 2025 the Learned Trial Magistrate dismissed the said application.
36. She also deposes that the 1<sup>st</sup> Applicant has had ample time to file his appeal which period begun to run from 5<sup>th</sup> November, 2024 to 5<sup>th</sup> December, 2024.
37. She further deposes that the delay of more than 98 days' points to a lack of seriousness and an intention of not filing an appeal.
38. It is her deposition that the mistake of the 1<sup>st</sup> Applicant's advocate in not filing the Notice of Appeal in the correct Court is a mistake that should not be visited upon the Respondent.
39. It is also her deposition that the 1<sup>st</sup> Applicant made a grave mistake in filing the application for stay of execution of the judgement in the same Court that delivered the judgement.
40. It is further her deposition that the application under consideration is an afterthought and was filed after she took possession of the suit parcel and begun to develop it.
41. She deposes that even though the 1<sup>st</sup> Applicant states that he requested for copies of proceedings, no letter has been filed on the online filing portal. She adds that the judiciary has an elaborate e-filing system which makes everything automated and it is good for record keeping purposes.
42. She also deposes that the 1<sup>st</sup> Applicant has not attached a Certificate of Delay from the Court to confirm that indeed the court contributed to the delay in the filing of the appeal.
43. She ends her deposition by stating that the reason advanced for the delay, the chances of the appeal succeeding and the degree of prejudice she is likely to suffer does not tilt in favour of extending time.

**The 1<sup>st</sup> Respondents further response to the application.**

44. The 1<sup>st</sup> Respondent filed a 'Further Replying Affidavit' sworn on 22<sup>nd</sup> April, 2025.
45. She deposes that the CEC Kericho County Attorney(sic) who was the 3<sup>rd</sup> Defendant in the suit before the trial Court swore an affidavit on 15<sup>th</sup> February, 2021 where he deponed that the previous owner one Joseph Langat (the 2<sup>nd</sup> Applicant) stated in a meeting that he had sold plot No. 104 to Kipkorir Soi. When he (Kipkorir Soi) died the said land devolved to her (1<sup>st</sup> Respondent) since she was his widow.
46. She also deposes that the CEC Lands Kericho County Attorney (sic) further swore that the 2<sup>nd</sup> Applicant confirmed that he did not own Plot No. 123 and that he did not know its owner.



47. She also deposes that the CEC Lands Kericho County (sic) further swore that upon verification and confirmation at the Department of Survey and Physical Planning, it was confirmed that there was an error in the numbering of the plots and that Plot No's 104 and 123 referred to one and the same plot.
48. She further deposes that the 1<sup>st</sup> Applicant only paid rates for plot No. 123 on 29<sup>th</sup> December, 2021. She adds that the said payment was triggered by the suit that had been filed before the trial Court.
49. She reiterates that the 1<sup>st</sup> Applicant has not filed a letter requesting for a copy of the proceedings in the CTS portal and is misleading this Court by stating that he requested for the same.
50. She ends her deposition by stating that the letter attached by the 1<sup>st</sup> Applicant to his affidavit in support of the application that he alleges to have written to request for the typed proceedings does not have a Court date stamp showing the date it was received.

**Issues for determination.**

51. The Applicants filed their submissions on 9<sup>th</sup> April, 2025 while the Respondent filed her submissions on 23<sup>rd</sup> April, 2025.
52. The Applicants submit on the following issues;
  - a. Whether the application for extension of time is merited.
  - b. Who should bear the costs of the application.
53. With regard to the first issue, the Applicants rely on Section 79G of the Civil Procedure Act and reiterate that the trial Court delivered its judgement on 5<sup>th</sup> November, 2024.
54. The Applicants submit that they were required by law to file their Memorandum of Appeal on or before 5<sup>th</sup> December, 2024 but they were not able to hence the filing of the application under consideration.
55. They rely on the judicial decisions of Edith Gichungu Koine vs Stephen Njagi Thoithi [2014] eKLR, Dzuya & another v. Anjarwalla (Legal Representative of the Estate of Hussein Karimbhai Anjarwalla) (Environment & Land Case 132 of 2019) [2024] KEELC 4394 (KLR) (17 May 2024) (Ruling) and submit that they filed the application under consideration on 11<sup>th</sup> February, 2025 which was 73 days after the period within which they were to file an appeal had lapsed.
56. The Applicants submit that they requested for typed copies of proceedings three days after judgement was delivered but they are yet to be supplied with the proceedings thereby leading to the delay in filing the appeal.
57. The Applicants reiterate that their former advocates on record filed a Notice of Appeal instead of a Memorandum of Appeal and upon the discovery of the said error, they had to look for another advocate which further delayed the filing of the application under consideration.
58. The Applicants rely on the judicial decision of Leo Sila Mutiso v Rose Hellen Wangari Mwangi (Civil Application No. Nai 255 of 1997) (unreported) and submit that the 1<sup>st</sup> Applicant is the registered owner of Plot No. 123 Kapkatet Market. The 1<sup>st</sup> Applicant purchased the said parcel of land from the 2<sup>nd</sup> Applicant herein.
59. It is the Applicants submissions that in their Memorandum of Appeal attached to their affidavit in support of the application, they raise the issue of whether Plot No. 123 was revoked.



60. It is the Applicants submissions that the Learned Trial Magistrate relied on the letter dated 22<sup>nd</sup> September, 2020 which had been struck off by his predecessor Hon. Mokua to make his findings despite it not being on the Court record. The Applicants submit that this is the second ground on their Memorandum of Appeal.
61. It is also the Applicants submissions that Plot No's 104 and 123 are two distinct parcels of land and therefore the application under consideration should be allowed to enable them ventilate their intended appeal.
62. It is further the Applicants submissions that the grounds raised in the Memorandum of Appeal demonstrate that they have a meritorious appeal.
63. The Applicants submit that the Respondent has not demonstrated any prejudice she is likely to suffer if the application is allowed.
64. The Applicants urge the Court to exercise its discretion and enlarge the time within which they can file an appeal and that the costs to abide the outcome of the appeal.
65. The Respondent submits on the following issues;
  - a. Whether this Honourable Court ought to extend the time for the Applicant to file an appeal out of time.
  - b. Whether the appeal has a chance of success.
  - c. Whether the Respondent herein will be prejudiced if the appeal is allowed.
66. On the first issue, the Respondent relies on Section 79G of the Civil Procedure Act and submits that extension of time is not granted as a matter of right.
67. It is the Respondent's submissions that an appeal can only be admitted out of time if an Applicant satisfies the Court that he has a sufficient cause for not filing the appeal on time.
68. The Respondent submits that the Applicants have attributed the delay in filing of the appeal on the failure to obtain typed proceedings from the lower Court but they have not availed a Certificate of delay from the Chief Magistrate's Court.
69. The Respondent relies on the judicial decision of Nicholas Kiptoo Arap Korir Salat v Independent Electoral and Boundaries Commission & 7 others [2014] eKLR and submits that the application under consideration has been filed 98 days after the appeal was supposed to be filed.
70. The Respondent reiterates that the Applicants have not placed anything before the Court to show that they applied for typed proceedings.
71. The Respondent reiterates the averments in her Replying Affidavit, relies on Mwangi v Kenya Airways Ltd [2003] KLR 486 and submits that the intended appeal is an afterthought.
72. The Respondent submits that the Applicants appeal has no chances of success as she has had the ownership of the suit parcel since the year 1991 while the Applicants allege that they purchased the plot in the year 2002.
73. The Respondent also submits that the Applicants intend to deny her the fruits of her judgement and she urges the Court to dismiss the application with costs.



## **Analysis and Determination.**

74. I have considered the Applicants application, the responses thereto and the submissions filed.
75. It is my view that the following issues arise for determination;
- a. Whether time within which to file an Appeal should be extended.
  - b. Whether the firm of Kiplating and Company Advocates should be allowed to come on record for the Applicants.
  - c. Who is to bear costs of the application.

### **A. Whether time within which to file an Appeal should be extended.**

76. The Applicants are seeking that the Court extends the time within which to file an Appeal.
77. They contend that the trial Court delivered its judgement on 5<sup>th</sup> November, 2024 but they were not able to file their Memorandum of Appeal by 5<sup>th</sup> December, 2024 as required by law.
78. They also contend that their previous Advocates on record filed a Notice of Appeal instead of a Memorandum of Appeal and by the time they discovered the said error and instructed a new Advocate, time to file an appeal had lapsed.
79. They further contend that they applied for certified copies of proceedings but to date the said proceedings have not been supplied to them.
80. The Applicants submit that their intended appeal has merit and that the Respondent will not be prejudiced in any way if the application is allowed.
81. In response, the Respondent contends that the Applicants had sufficient time to file their appeal but they failed to so.
82. The Respondent further contends that the Applicants have not produced any letter to show that they applied for proceedings.
83. The Respondent also contends that the letter the Applicants have attached to their affidavit in support of the application does not bear the Court stamp.
84. It is the Respondent's contention that there was a delay in the filing of the application under consideration and no sufficient reason for the delay has been given.
85. The law governing appeals to this court is in Section 79G of the *Civil Procedure Act*. It 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.”
86. Under the provisions of Section 79G of the *Civil Procedure Act*, time for filing an appeal from a judgement of a subordinate Court to the High Court and Courts of equal status is thirty days.



87. In the present matter, the subordinate Court delivered its judgement on 5<sup>th</sup> November, 2024. It follows that any appeal challenging the said decision ought to have been filed on or before 5<sup>th</sup> December, 2024.
88. In the judicial decision of *Stecol Corporation Limited v Susan Awuor Mudemb* [2021] eKLR the Court held as follows;

“ 15. In *Charles Karanja Kiiru Vs Charles Githinji Muigwa* [2017]eKLR where the Respondent had delayed for 41 days before filing an appeal and where the High Court enlarged time to enable the Respondent file an appeal out of time, the appellant was aggrieved by the order enlarging time claiming that the learned Judge erred in law and fact by exercising his discretion and extending time for filing an appeal out of time yet no sufficient reason had been offered to justify the same, the Court of Appeal cited this Court’s decision in *Wanjiru Mwangi & Another* [2015]eKLR and *APA Insurance Co. Ltd Vs Michael Kinyanjui Muturi*[2016]e KLR in dismissing the appeal.

16. I will therefore entirely rely on the above binding Court of Appeal decision in determining the merits of this application which is two pronged namely:- whether the prayer for extension of time is merited and whether this Court can validate an appeal which was filed out of time.

17. Under Section 79G of the *Civil Procedure Act*:

“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 a good and sufficient cause for not filing the appeal in time.”[Emphasis added].

18. The Court of Appeal in the above Case guided that whenever an application for extension of time is before a Court, the Court ought to take into account several factors as observed by Odek JJA in *Edith Gichungu Koine Vs Stephen Njagi Thoithi* [2014]eKLR thus:

“Nevertheless, it ought to be guided by consideration of factors stated in many previous decision of this Court including, but no limited to, the period of delay, the reasons for the delay, the degree of prejudice to Respondent if the application is granted, and whether the matter raises issues of public importance, amongst others.”

19. The Court of Appeal further guided that there is also a duty imposed on Courts to ensure that the factors considered are consonant with the overriding objective of civil proceedings litigation, that is to say, the just, expeditious, proportionate and affordable resolution of disputes before the Court.” [Emphasis Mine]



89. In the judicial decision of *Thuita Mwangi v Kenya Airways Ltd* [2003] eKLR the Court of Appeal found 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 extension 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.”

90. As was held in the above cited judicial decisions, there are various factors the Court has to consider in determining whether or not to extend time within which to file an appeal.

91. They include the length of the delay, the reasons for the delay, the chances of the appeal succeeding if the prayers sought are granted and the prejudice the Respondent is likely to suffer if the application is allowed.

92. The first issue for consideration is the length of the delay. The Applicants contend that they filed the application under consideration seventy-three days after the thirty-day period within which to file an appeal had lapsed.

93. The Respondents contend that the application under consideration was filed ninety-eight days after the trial Court delivered its judgement.

94. The trial Court delivered its judgement on 5<sup>th</sup> November, 2024. The application under consideration was filed on 15<sup>th</sup> February, 2025 which was after a period of about three months had lapsed.

95. In the judicial decision of *In re Estate of Bare Adan Mohamed (Deceased) (Civil Appeal E013 of 2023)* [2024] KEHC 3416 (KLR) (15 March 2024) (Ruling) the Court held as follows;

“In the case of *Jaber Mohsen Ali & Another v Priscillah Boit & Another E & L No. 200 of 2012 {2014}* eKLR the Court stated that what is unreasonable delay is dependent on the circumstances of each case. That even one day after Judgment/Ruling could be unreasonable delay depending on the Judgment/Ruling of the Court and any order given thereafter.”

96. The second issue for consideration is the reasons given for the delay. The reasons for the delay given by the Applicants are that one, they applied for typed proceedings which they are yet to be supplied with and that two, their former Advocates on record filed a Notice of Appeal instead of a Memorandum of Appeal. They submit that by the time they discovered the said error and instructed another advocate, time had already lapsed.

97. The Respondent contends that even though the Applicants allege that they wrote a letter requesting for proceedings, there is no such letter in the CTS system and that the letter they have attached to their affidavit in support of the application does not bear the Court Stamp.

98. With regard to the second reason for the delay, the Respondent contends that the mistake of the Applicant’s previous advocates on record, of filing a Notice of Appeal instead of a Memorandum of Appeal, should not be visited upon her.

99. Among the documents the Applicants have attached to their affidavit in support of the application is a copy of a letter dated 8<sup>th</sup> November, 2024 addressed to the Executive Office (sic) Kericho Law Courts



requesting for certified copies of proceedings of CM ELC Case No. E22 of 2020 Pricilla Chepkemioi versus Paul Kipngeno Ngetich & Others. As pointed out by the Respondent, the said letter does not bear a Court stamp.

100. The Applicants have also attached a Notice of Appeal filed in Kericho CM ELC Case No. E22 of 2020. It states that the 1<sup>st</sup> Appellant intends to file an appeal against the decision of the Court. The Notice of Appeal is dated 8<sup>th</sup> November, 2024 and lodged on the same day.
101. In the judicial decision of Andrew Kiplagat Chemaringo v Paul Kipkorir Kibet [2018] KECA 701 (KLR) the Court held as follows;
  - “(12) The law does not set out any minimum or maximum period of delay. All it states is that any delay should be satisfactorily explained. A plausible and satisfactory explanation for delay is the key that unlocks the Court’s flow of discretionary favour. There has to be valid and clear reasons, upon which discretion can be favourably exercisable.” (Emphasis mine)
102. It is evident that the Applicants are desirous of appealing against the judgement of the trial Court and in error, their counsel filed a Notice of Appeal instead of a Memorandum of Appeal. On discovery of this error, the Applicants state that the time within which to file the appeal had lapsed.
103. It is however, this Court’s view that the assertions that the Applicants wrote a letter requesting for typed proceedings is unsubstantiated as they have not attached a copy of the said letter that bears the stamp of the Court.
104. The third issue for consideration is whether the Applicants have an arguable appeal.
105. The Applicants contend that they have an arguable appeal. The Respondent did not address the issue of whether or not the Applicants have an arguable appeal but instead submitted that the chances of success of the Applicants intended appeal are slim. In Paul Njage Njeru v Karija K Mugambi [2021] eKLR the Court while considering a similar application held as follows;
  - “ 15. On the chances of the appeal succeeding, the Applicant has annexed a draft Memorandum of Appeal raising 3 grounds of appeal which challenge the trial Court’s exercise of discretion to grant leave to file a claim which was already time barred. The Court considers that an appeal on the question of whether or not the Court could grant leave to appeal out of time and therefore, whether the Court has jurisdiction to entertain the claim is arguable. The Court considers that an arguable appeal is not one which must necessarily succeed and it is not for this Court, at this stage to go into the merits of the appeal, to avoid embarrassing the Court that will sit on appeal, if leave is ultimately granted and the appeal is filed.” [Emphasis Mine]
106. I have perused the draft Memorandum of Appeal. Among the various grounds on the Memorandum of Appeal, one is whether Plot No. 123 and Plot No. 104 refer to the same parcel or whether they are distinct parcels and whether the learned Trial Magistrate erred in his determination of this question.
107. My view is that the intended Appeal is arguable.
108. The other issue for consideration in making a finding in favour of extension of time within which to file an appeal is whether prejudice may be caused to the Respondent. By prejudice we mean the injustice the Respondent is likely to suffer if time within which to file an appeal is extended.



109. The Applicants state that no prejudice shall be caused to the Respondent if the application is allowed while the Respondent did not submit on whether she will suffer any prejudice if time to file an appeal is extended. Instead, the Respondent submits that she will be prejudiced if the appeal is allowed.

110. I find that no known prejudice will be occasioned to the Respondent in allowing this application.

111. The Court in *Paul Njage Njeru v Karija K Mugambi* (supra) further held as follows;

“18. Ultimately, the Court considers that in the circumstances of the case, even though the delay of one and a half years on the part of the Applicant was inordinate and that the Applicant has not advanced any good reasons for the delay but has merely made unsubstantiated claims which this Court cannot fully rely on, the Court finds that there appears to be an arguable point of law, on the question of whether or not the trial Court could extend time for filing a claim based on breach of contract after the statutory timelines had lapsed. That, together with the absence of prejudice entitles the Court to exercise its discretion in favour of the Applicant and therefore grants leave to appeal out of time. The Court however finds that the Applicant must pay the costs of the application for failing to advance any good reasons for the delay as was required of him.” [Emphasis Mine]

112. As afore stated, the Applicants contention that they requested for typed proceedings is not substantiated as the Applicants did not attach a letter requesting for typed proceedings that bore the stamp of the Court.

113. Nevertheless, this Court having found that the Applicants have an arguable appeal and that the Respondent will not suffer any prejudice, time within which to file an appeal is hereby extended.

**B. Whether the firm of Kiplating and Company Advocates should be allowed to come on record for the Applicants.**

114. The Applicants are seeking orders that the Court allows the firm of Kiplating & Company Advocates to come on record.

115. The Respondent did not submit on this issue.

116. Order 9 Rule 9 of the Civil Procedure Rules provides as follows;

“When there is a change of Advocate, or when a party decides to act in person having previously engaged an Advocate, after judgment has been passed, such change or intention to act in person shall not be effected without an order of the Court—(a) upon an application with notice to all the parties; or (b) upon a consent filed between the outgoing advocate and the proposed incoming advocate or party intending to act in person as the case may be.”

117. In the judicial decision of *Alice Wambui Nganga v John Ngure Kahoro* [2021] eKLR the Court held as follows;

“The Law Firm of Norman Otieno & Co. Advocates, have sought for leave. The provisions of Order 9, allows the Court to grant leave when a consent is filed and Rule 10, allows the said prayer seeking leave to be brought together with other prayers. The prayer for leave for the



said Law Firm has not been disputed nor contested thus the Law Firm of Norman Otieno & Co. Advocates, is properly on record.”

118. I find no reason not to grant an order that the firm of Kipleting and Company Advocates be allowed to come on record for the Applicants.

**C. Who shall bear costs of this application?**

119. On the question of costs, it is now settled that costs shall follow the event. This is in accordance with the provisions of Section 27 of the *Civil Procedure Act* (Cap. 21). A successful party should ordinarily be awarded costs of an action unless the Court, for good reason, directs otherwise.

**Disposition.**

120. Taking the foregoing into consideration, I find that the application dated 11<sup>th</sup> February, 2025 has merit and it is hereby allowed in the following terms;

- a. Time within which the Applicants shall lodge an appeal against the judgement and decree in Kericho CM ELC Case No. E022 of 2020 is hereby extended.
- b. The firm of Kipleting & Company Advocates is hereby granted leave to come on record for the Applicants.
- c. The costs of this application shall await the outcome of the Appeal.

121. It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT KERICHO THIS 17<sup>TH</sup> DAY OF JULY, 2025.**

**L. A. OMOLLO**

**JUDGE.**

In the presence of: -

Mr. Kipleting for the 1<sup>st</sup> and 2<sup>nd</sup> Applicants.

Mr. Kirui for the Respondent.

Court Assistant; Mr. Joseph Makori.

