



Ajuok (Suing as the Legal Representative of the Estate of Hagai Ajuok - Deceased) v Okoko & 2 others (Civil Application E168 of 2024) [2025] KECA 468 (KLR) (7 March 2025) (Ruling)

Neutral citation: [2025] KECA 468 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT KISUMU
CIVIL APPLICATION E168 OF 2024
WK KORIR, JA
MARCH 7, 2025**

BETWEEN

PAMELA AKECH AJUOK (SUING AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF HAGAI AJUOK - DECEASED) APPLICANT

AND

**PETER NICHOLAS YAHUMA OKOKO 1ST RESPONDENT
EDWIN OWINO OWUOR 2ND RESPONDENT
DISTRICT LAND REGISTRAR (UKWALA) 3RD RESPONDENT**

(Being an application for leave to file an appeal out of time against the Ruling of the Environment and Land Court at Siaya (A.Y. Koros, J.) dated 26th September 2024 in ELC Case No. E008 of 2023)

RULING

1. Even though the notice of motion dated 8th November 2024 is omnibus, what is properly within my jurisdiction sitting as a single Judge is the prayer for leave to file an appeal out of time. The applicant, Pamela Akech Ajuok (Suing as the Legal Representative of the estate of Hagai Ajuok (Deceased)), seeks leave to appeal out of time on the grounds alluded to on the face of her application and the averments in the supporting affidavit sworn on the date of the application.
2. The applicant's suit, being Siaya Environment and Land Case (ELC) No. E008 of 2023 was dismissed through a ruling delivered on 26th September 2024 for being res judicata, and costs were awarded to the 2nd respondent, Edwin Owino Owuor. Upon delivery of the ruling, counsel for the applicant visited her at her home and advised her on the import of the said ruling. However, the applicant who was unwell asked for more time to recover before she could decide whether to appeal.



3. The applicant avers that it was not until 6th November 2024 that she sent her son to counsel relay her intention to pursue an appeal against the impugned ruling. She further avers that she is 76 years old and always depends on her children's advice in respect to the litigation on the suit property, hence the delay in deciding to pursue the appeal. She also deposes that the intended appeal is arguable and has high chances of success and that the respondents will not be prejudiced should leave be granted for filing an appeal out of time. In a further affidavit sworn on 9th December 2024, the applicant reiterated the Court's jurisdiction to hear the application.
4. Learned counsel, Ms. Diana Achieng for the 2nd respondent swore an affidavit on 27th November 2024 in opposition to the application. Counsel has concentrated her firepower on the prayer for stay of execution, which as I have already stated is not within my jurisdiction while sitting as a single Judge. In respect to the application for enlargement of time, counsel avers that the applicant is guilty of laches and that the intended appeal is not arguable, is an afterthought and should be dismissed with costs.
5. When the application came up for hearing on 6th February 2025, only learned counsel Daniel Achach had filed written submissions dated 10th January 2025 on behalf of the applicant. Counsel referred to rule 4 of the Court of Appeal Rules to pinpoint the Court's jurisdiction and to the case of Nicholas Kiptoo Korir Arap Salat vs. IEBC & 7 Others [2014] eKLR to appreciate the principles underpinning the grant of leave to appeal out of time. Counsel submitted that, despite the delay of 28 days, the applicant had sufficiently explained the delay. Counsel asserted that the intended appeal was arguable and the respondents would suffer no prejudice if time were enlarged. Additionally, counsel submitted that the applicant had met the condition for enlargement of time, having filed the application without unreasonable delay, thereby complying with the holding in Sokoro Savings & Credit Cooperative Society Ltd vs. Mwamburi [2023] KECA 381 (KLR) that such an application should be brought without undue delay. Counsel consequently urged that the application be allowed as prayed.
6. As already appreciated by counsel for the applicant, the principles undergirding the exercise of the discretion for enlargement of time were condensed by the Supreme Court in Nicholas Kiptoo Arap Korir Salat vs. Independent Electoral and Boundaries Commission & 7 Others (supra) thus:
 - “ 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.”
7. The question is whether the applicant has tendered satisfactory reasons warranting the enlargement of time for filing an appeal. The impugned ruling was delivered on 26th September 2024. Therefore, the



notice of appeal should have been filed on or before 10th October 2024. This application is dated 8th November 2024, and the delay was for about 28 days. The reasons adduced by the applicant for the delay are that she was unwell and was not in a position to secure the necessary advice from her children on what to do about the impugned ruling.

8. Even though the applicant has not annexed any documents to confirm that she was indeed ill, her averments were not rebutted. I also note that the applicant stated that she was 76 years old and relied on her children to make serious decisions, like the filing of an appeal. In my view, the reasons advanced sufficiently explain the delay of 28 days, which I would also ordinarily find not to be inordinate.
9. As to whether the respondents stand to suffer prejudice if the present application is allowed, I find that the respondents have not laid any arguments before the Court to counter the applicant's request to be permitted to enjoy her right of appeal and audience before this Court. That being the case, I find no perceived or actual prejudice that the respondents will suffer if time is enlarged to allow the applicant an opportunity to pursue her appeal.
10. As a result, I find merit in the motion and, accordingly, grant it on the following terms:
 - i. The applicant to file the Notice of Appeal within 7 days of today's date.
 - ii. The time for all the other activities consequent to filing the notice of appeal shall be as per the Rules of the Court, and time will start running from the date of this ruling.
 - iii. The costs of this application shall abide by the outcome of the intended appeal.

DATED AND DELIVERED AT KISUMU THIS 7TH DAY OF MARCH 2025.

W. KORIR

.....

JUDGE OF APPEAL

I certify that this is a True copy of the original

Signed

DEPUTY REGISTRAR

Page 1 of 5

