



REPUBLIC OF KENYA



KENYA LAW
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**Kananu v Aruja & 4 others (Civil Application E006 of 2025)
[2025] KECA 569 (KLR) (7 March 2025) (Ruling)**

Neutral citation: [2025] KECA 569 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NYERI
CIVIL APPLICATION E006 OF 2025
S OLE KANTAI, JA
MARCH 7, 2025**

BETWEEN

JANET KANANU APPELLANT

AND

JOHN THURANIRA ARUJA 1ST RESPONDENT

SHEILA GACHERI THURANIRA 2ND RESPONDENT

DUNCAN KITHINJI THURANIRA 3RD RESPONDENT

MUREITHI ARUJAH 4TH RESPONDENT

MARTIN KINOTI ARUJAH 5TH RESPONDENT

(An application for leave to file and serve the Notice of Appeal and Record of Appeal out of time from the Judgment and Order of the Environment and Land Court at Meru (C. K. Nzili, J.) delivered on 10th May, 2023 in E.L.C. Case No. 16 of 2018.)

RULING

1. I am asked in the main in the Motion brought under rule 4 of the Court of Appeal Rules to be pleased to issue an order extending the time for appealing against the judgment and subsequent rulings/orders in Meru Environment and Land Court (ELC) No. 16 of 2018 (Nzili, J.) and that notice of appeal annexed to the application be deemed as properly filed. In grounds in support of the application and in a supporting affidavit of the applicant Janet Kananu it is deposed that the applicant is dissatisfied with the judgment “and rulings” of ELC and desires to appeal; that on 10th May, 2023 ELC directed the Land Registrar to visit the suit parcels of land to establish the nature of encroachment and to fix the boundaries “... in line with the [land registration Act](#) whereby in any case the said provisions of the law were utterly disregarded by the Respondents ...” Further, that the respondents are demolishing the applicant’s home and structures where the applicant and her family have resided since 1986;



that the applicant was never notified of the said process of fixing boundaries and the process was conducted secretly without her participation; that the process led to the applicant incurring huge losses because farm produce and developments were demolished leading to the applicant and her family being rendered destitute; the applicant wants to appeal but is time barred and may be evicted from the land. The applicant says at grounds 10 and 11 of the Motion:

10. That the delay in the Applicant approaching the Honourable Court from May, 2023 was due to the fact that the Applicant was waiting for the exercise of the boundary fixation to be done with hope that the same would observe the law however despite the process taking much time it produced a flawed report.
11. That unless this Honourable Court intervenes and grants the orders sought, the Applicant's right to pursue an appeal against the said judgement and subsequent orders shall be rendered nugatory and the ends of justice shall not be met.”

It is said, in conclusion, that the respondents will not suffer any prejudice should the application be allowed.

2. Attached to the application is the judgment delivered on 10th May 2023 where the applicant's suit was dismissed. There is also an unsigned report by the Survey Department of Ministry of Lands, Public Works, Housing and Urban Development dated 13th March, 2024, a draft notice of appeal and a draft memorandum of appeal.
3. I have seen a replying affidavit by the 1st respondent John Thurania Aruja who says that he has authority of the other respondents to make the affidavit. He says that the applicant did not appeal within 14 days as required; that no explanation has been given why an appeal was not filed on time; that there is no letter by the applicant applying for proceedings of ELC; that the applicant was satisfied with the judgment and was only aggrieved by findings of the Land Registrar. He depones at paragraphs 10 and 11 of replying affidavit:
 10. That the compliance with the Judgment of the court dated 10th May, 2023 was done in the presence of both parties and the report by the Land Registrar and the District Surveyor confirmed that the Applicant was not residing on the suit land as she had claimed before the superior court. Annexed and marked “JTA” is a copy of the report dated 13/3/2024.
 11. That in view of the findings of the superior court in the Judgment dated 10th May, 2023 and the findings in the report dated 13/3/2024 by the land Registrar and the District Surveyor, the intended appeal is clearly not arguable.”
3. The principles that apply in an application of this nature were well summarized by this Court in the case of *Leo Sila Mutiso vs. Rose Hellen Wangari Mwangi* [1999] 2 EA 231 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 stated 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.”

4. I note that judgment was delivered by ELC on 10th May, 2023 while the application before me is dated 21st January, 2025. The applicant has not explained why the application was not filed within reasonable time. There is no explanation for the delay of over 20 months to bring the application. There is also no explanation why notice of appeal was not lodged within the time required in law.



5. The applicant's suit was dismissed and I have my doubts on the intended appeal succeeding.
6. I agree with the respondents that they will be prejudiced in those circumstances if I exercise my discretion in favour of the applicant.
7. I refuse to exercise discretion in favour of the applicant and I dismiss the Motion with costs to the respondents.

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

S. OLE KANTAI

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JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

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