



Ngore v Ntongai (Suing as the Legal Representative of the Estate of Joseph M’Alabwa - Deceased) & another (Civil Appeal (Application) E030 of 2025) [2025] KECA 1266 (KLR) (27 June 2025) (Ruling)

Neutral citation: [2025] KECA 1266 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NYERI
CIVIL APPEAL (APPLICATION) E030 OF 2025
S OLE KANTAI, JA
JUNE 27, 2025
[IN CHAMBERS]**

BETWEEN

CHARLES MUTETHIA NGORE APPLICANT

AND

BATISTA MURIUKI NTONGAI (SUING AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF JOSEPH M’ALABWA - DECEASED) 1ST RESPONDENT

JOHN MICHUBU M’NGUTHARI 2ND RESPONDENT

(An application for extension of time to lodge record of appeal out of time against the Judgment and Decree of the Environment and Land Court at Meru (C.K. Yano, J.) in E.L.C Appeal No. 101 of 2021)

RULING

1. The litigation here has been ongoing for a long time.
2. There is an amended plaint filed at the Chief Magistrates’ Court at Maua by Joseph Ntongai M’Alabwa against John Michubu M’Nguthari and Charles Mutethia Ngore (the applicant here) where it was prayed that an order be given to compel the defendant to transfer 0.40 acres of land – parcel number 5036/Kangeta/Kangeta Adjudication section to the plaintiff “... forms and the executive officer to sign the transfer if the defendant refuses to do so...”; and an order cancelling the name of the interested party of the said land and registering the said land in the name of the plaintiff.
3. The suit was determined in favour of the plaintiff and judgment entered accordingly on a date which is not indicated in the judgment.



4. There was an appeal to the Environment and Land Court at Meru where the applicant here (Charles Mutethia Ngoro) was the appellant, John Michubu M’Nguthari was the Interested Party while Joseph Ntongai M’Alabwa was the respondent. Yano, J. in a judgment delivered on 5th July, 2023 found no merit in the appeal which he dismissed with costs to the respondent.
5. The applicant filed a notice of appeal dated 17th July, 2023 and applied for proceedings by letter dated 5th July, 2023 which I note was not copied to the respondent.
6. The applicant has by Motion on notice dated 12th March, 2025 applied under rules 4 and 5 (2)(b) of the *rules of this Court* for extension of time to lodge record of appeal out of time and for stay of execution of judgment and decree of the judgment of the magistrate’s court. I will only deal with that part of the application that relates to enlargement of time as that other part is within the province of a full bench of the court.
7. The applicant states that he lodged a notice of appeal immediately after delivery of judgment by Yano, J.; that before he could lodge record of appeal the 1st respondent passed away on 5th August, 2024 and was substituted in October, 2024 but the applicant came to learn about it much later; that the appeal is arguable and that unless the orders sought are granted the applicant will lose his right of appeal.
8. In a replying affidavit the 1st respondent Batista Muriuki Ntongai depones that the applicant has not sufficiently explained delay in lodging appeal having received proceedings on 1st December, 2023; the deceased died on 5th July, 2023; that there is no draft memorandum of appeal and the application should be dismissed.
9. The principles that apply in an application for extension of time in this Court were explained in the oft-cited case of *Leo Sila Mutiso v. Rose Hellen Wangari Mwangi* Civil Application No. NAI 255 of 1997, 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.”
10. I have considered the application. Although a notice of appeal was filed on time I note that the letter bespeaking proceedings was not copied to the respondent and the applicant is not entitled to the credit–time given by rule 84 of the *Court of Appeal Rules* in the absence of copying the said letter to the respondent. I am not satisfied that there is any reasonable explanation for delay in lodging an appeal within the time prescribed by the rules of this Court. I have not been given any material to consider whether the intended appeal has any chance of success and I am told by the respondent in the replying affidavit that the land has been transferred as per the orders of the courts below.
11. The application has no merit and I dismiss it with costs to the 1st respondent.

DATED AND DELIVERED AT NYERI THIS 27TH DAY OF JUNE, 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

