



**Maingi v Kathiga (Environment and Land Miscellaneous Application
E016 of 2024) [2025] KEELC 962 (KLR) (25 February 2025) (Ruling)**

Neutral citation: [2025] KEELC 962 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT CHUKA
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E016 OF 2024
BM EBOSO, J
FEBRUARY 25, 2025**

BETWEEN

MIRITI UHURU MAINGI APPLICANT

AND

JAMES NJERU KATHIGA RESPONDENT

RULING

1. Through the notice of motion dated 27/11/2024, the applicant sought: (i) an order enlarging the time within which to lodge an appeal against the Judgment rendered on 30/9/2024 by Hon. Mbayaki Wafula in Marimanti Magistrate Court MCELC Case No. 11 of 2015; and (ii) an order staying execution of the said Judgment, pending the hearing and determination of the application. At this point, the plea for a temporary order of stay of execution is spent. What remains to be considered in the application is the plea for an order enlarging the time within which to lodge an appeal. The application is uncontested. The application is the subject of this ruling.
2. The single question to be answered in this ruling is whether the application satisfies the criteria for granting an order enlarging the time within which to lodge an appeal to this Court. Both Section 16A (2) of the *Environment and Land Court Act* and Section 79G of the *Civil Procedure Act* vest in this Court jurisdiction to enlarge the limitation period for lodging an appeal to this Court.
3. The principles upon which our courts exercise the jurisdiction to enlarge time were outlined by the Supreme Court of Kenya in *Nicholas Kiptoo Arap Korir Salat v Independent Electoral and Boundaries Commission & 7 Others* [2014] eKLR as follows:
 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.
4. The Judgment which is the subject of the intended appeal was rendered on 30/9/2024. The 30 day limitation period lapsed on 30/10/2024. The application under consideration was brought on 28/11/2024. There was, therefore, a delay of 28 days.
 5. The applicant contends that the delay was occasioned by two reasons; (i) delay in accessing a certified copy of the Judgment from Marimanti Law Courts; and (ii) financial constraints which made it difficult for him to access legal services. For unknown reasons, the respondent did not oppose the application.
 6. Taking into account the period of delay, the explanation tendered, and the fact that the plea is uncontested, the Court takes the view that the criteria for granting a time enlargement order has been met. The applicant is granted an enlargement of seven (7) days within which to file and serve an appeal against the Judgment rendered in Marimanti Magistrate Court MCELC Case Number 11 of 2015.
 7. Given that this application was uncontested, there shall be no award of costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT CHUKA THIS 25TH DAY OF FEBRUARY, 2025.

B M EBOSO [MR]

JUDGE

In the Presence of:

Court Assistant – Mwangi

Applicant – Absent

Respondent – Absent

