



Mutugi (Suing as the legal representative of the Estate of Abraham Mucee - Deceased) v Kathare (Environment and Land Miscellaneous Application E015 of 2024) [2025] KEELC 2993 (KLR) (26 March 2025) (Ruling)

Neutral citation: [2025] KEELC 2993 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT CHUKA
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E015 OF 2024
BM EBOSO, J
MARCH 26, 2025

BETWEEN

JOHN MUTUGI (SUING AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF ABRAHAM MUCEE - DECEASED) APPLICANT

AND

SILAS NYAGA KATHARE RESPONDENT

RULING

1. Falling for determination in this ruling is the notice of motion dated 6/11/2024, brought by John Mutugi (Suing on behalf of the estate of Abraham Mucee – Deceased, referred to in this ruling as “the applicant”). Through the motion, the applicant seeks an order enlarging the time within which to file an appeal challenging the Judgment rendered by Hon Mbayaki Wafula on 18/5/2023. The applicant further prays for an order deeming as duly filed, the draft memorandum of appeal attached to the application. Although the prayers do not disclose the case in which the said Judgment was rendered, it does emerge from the grounds outlined in the motion that it was rendered in Marimanti SPMC E&L Case No E017 of 2021. The application is contested.
2. The application was premised on the grounds outlined in the motion and in the applicant’s supporting affidavit dated 6/11/2024. It was canvassed through written submissions dated 4/2/2025, filed by M/s Musyimi Damaris & Company Advocates. The case of the applicant is that he brought the instant application in his capacity as the administrator of the estate of his deceased father, the late Abraham Mucee, who died on 16/10/2021. The deceased is the registered proprietor of land parcel number Ntugi/Kanyuru/807 which abuts land parcel number Ntugi/Kanyuru/806, owned by the respondent.
3. The applicant adds that the respondent sued him as the 2nd defendant in Marimanti SPMC E&L Case No E017 of 2021 in which he sought: (i) a permanent injunction restraining the two defendants



named in the said suit against entering, encroaching on, trespassing on, erecting structures on, claiming ownership of, or interfering with the respondent's occupation and use of land parcel number Ntugi/Kanyuru/806; (ii) an order decreeing the Tharaka Sub-County Surveyor to fix the boundaries relating to the two abutting parcels and directing the Area Police Station to provide security; and (iii) an order awarding the respondent costs of the suit. He contends that he objected to the said suit on the ground that his father who was and still is the registered owner of one of the two parcels affected in the boundary dispute (Ntugi/Kanyuru/807) had died and his estate had not appointed an administrator. The trial court nonetheless proceeded with the matter and rendered a Judgment in the matter.

4. The applicant further states that he was unable to initiate an appeal against the said Judgment within the prescribed time because his request for a copy of the Judgment was not acted on by the Marimanti SPM Court. He adds that last year, the estate of the late Abraham Mucee initiated succession proceedings and obtained a limited grant on 15/10/2024, allowing him to initiate and prosecute legal proceedings on behalf of the estate. It is his case that the estate seeks to challenge the said Judgment through an appeal to this court. It is on the above grounds that he seeks an order enlarging the time within which to file an appeal.
5. The respondent opposed the application through a replying affidavit dated 23/1/2025 and written submissions dated 10/2/2025, both filed by M/s E P & Co Advocates. He termed the application as misconceived and a waste of the court's precious time. The case of the applicant is that, in the original plaint through which he initiated the suit in the lower court, Abraham Mucee was sued as the 2nd defendant, adding that the applicant "popped up" with a preliminary objection in the suit. The respondent contends that the applicant was subsequently made a party to the case, adding that "in extension," the applicant eventually obtained grant of letters of administration relating to his father's estate.
6. The respondent contends that the case in the lower court did not involve the land owned by the late Abraham Mucee, adding that the case involved a boundary dispute relating to parcel number Ntugi/Kanyuru/806 which he (the respondent) owns. On the applicant's contention that the lower court lacked jurisdiction to adjudicate a boundary dispute, the respondent contends that the applicant voluntarily submitted himself to the jurisdiction of the lower court.
7. The respondent adds that the applicant was all along aware of the Judgment because he was present when it was rendered. The respondent states that the applicant has not demonstrated a good and sufficient cause to warrant grant of an enlargement order. The respondent further states that the applicant has not tendered a satisfactory explanation for the inordinate delay. He urges the court to reject the application.
8. I have considered the application, the response to the application, and the parties' respective submissions. I have also considered the relevant legal frameworks and jurisprudence. The two questions to be answered in this ruling are: (i) Whether, in this circumstances of the application, the leave sought is necessary; and (ii) Whether the application meets the criteria for enlargement of the limitation period within which to lodge an appeal to this court.
9. The limitation period for lodging an appeal to this court against judgments of the lower courts is set by Section 16A of the *Environment and Land Court Act* and Section 79G of the *Civil Procedure Act*. The frameworks in the two statutes provide for a limitation period of 30 days from the date of delivery of judgment. The two frameworks vest in this court discretionary jurisdiction to enlarge the limitation period. The legislated guiding principle in the two frameworks is that the discretionary jurisdiction should be exercised on the basis of good and sufficient cause.



10. The general jurisprudential principles that guide our courts whenever invited to exercise the above jurisdiction were outlined by the Supreme Court of Kenya in the case of Nicholas Kiptoo Arap Korir Salat Vs. Independent Electoral and Boundaries Commission & 7 others [2014] eKLR as follows:
 1. Extension of time was not a right of a party. It was an equitable remedy that was only available to a deserving party at the discretion of the court;
 2. A party who sought extension of time had the burden of laying a basis for it to the satisfaction of the court;
 3. Whether the court ought to exercise the discretion to extend time, was a consideration to be made on a case to case basis;
 4. Whether there was a reasonable reason for the delay, which ought to be explained to the satisfaction of the court;
 5. Whether there would be any prejudice suffered by the respondents if the extension was granted;
 6. Whether the application had been brought without undue delay; and;
 7. Whether in certain cases, like election petitions, public interest ought to be a consideration for extending time.
11. The applicant in the present application is the estate of the late Abraham Mucee. The estate brought the application through John Mutugi who is the recently appointed administrator of the estate pursuant to a limited grant of letters of administration issued on 15/10/2024 in Marimanti SPMC Misc Succession Cause No E010 of 2024; In the Matter of the Estate of Abraham Mucee (Deceased). There is no evidence suggesting that the late Abraham Mucee or his estate were parties to Marimanti SPMC E&L Case No E017 of 2021 at the time the impugned Judgment was rendered. Put differently, with regard to the estate of the late Abraham Mucee who is alleged to be the registered proprietor of parcel number Ntugi/Kanyuru/807, the impugned Judgment appears to be an ex-parte Judgment. I say so because, under the *Law of Succession Act*, only the duly appointed personal representative of the deceased (the duly appointed administrator or executor) has the locus standi to initiate/prosecute or defend a claim against the estate of a deceased person. Although the respondent obtained Judgment against John Mutugi who is now the appointed administrator of the estate, there is no evidence to suggest that he (John Mutugi) was the duly appointed administrator or executor at the time the suit was initiated or at the time the impugned Judgment was rendered. Put differently, there is no evidence to suggest that the said estate was a party to the case.
12. Given the above circumstances, the proper procedure at this point is for the estate to first exhaust the remedies available to it in the trial court. If it is true that the Judgment and Decree of the lower court adversely affect the estate of the late Abraham Mucee yet the estate was not a party to the case, the available remedy is for the estate to apply for an order setting aside the said Judgment so that the estate can be accorded the opportunity to be heard in the dispute. Should the applicant or any other party be dissatisfied with the ultimate decision of the lower court on the application for a setting aside order or by any subsequent inter-partes judgment of the lower court, they will be at liberty to lodge an appeal to this court against the decision of the lower court. That is the remedy which the applicant needs to first exhaust before moving to this court through an appeal.
13. For the above reason, the court takes the view that the application for a time-enlargement order is unnecessary at this point because the estate has not exhausted the remedy available in the trial court. The court further takes the view that the present application should be struck out without venturing into the second issue.



14. Taking into account the failure of the respondent to demonstrate that the registered proprietor of the abutting parcel was a party to the Judgment in the lower court, there will be no award of costs in the present miscellaneous application.

15. In the end, for the above reason, the application dated 6/11/2024 is struck out with no order as to costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT CHUKA THIS 26TH DAY OF MARCH, 2025.

B M EBOSO [MR]

JUDGE

In the Presence of:

Ms. Musyimi for the Applicant

Mr. Onchiri for the Respondent

Court Assistant - Moses

