



**Gichuru v Wahome & another (Environment and Land Appeal
E042 of 2024) [2025] KEELC 8514 (KLR) (8 December 2025) (Ruling)**

Neutral citation: [2025] KEELC 8514 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND APPEAL E042 OF 2024
CA OCHIENG, J
DECEMBER 8, 2025**

BETWEEN

JAMES GICHURU APPELLANT

AND

PHILLIP KOMU WAHOME 1ST RESPONDENT

HOMEWAY POULTRY FARM LIMITED 2ND RESPONDENT

RULING

1. The Appellant commenced this 'Appeal' and filed an application dated 26th March 2024, which seeks among other orders, stay of execution of the judgement entered by the trial court, Hon. Rawlings Liluma (SRM) on 26th January 2023.
2. Subsequently, the Respondents filed a Notice of Preliminary Objection dated 7th May 2024, contending that the Appeal is defective for being filed out of time without leave of this Court and that the said application dated 26th March 2024 is fatally defective as no Judgement was delivered on 26th January 2023.
3. Thereafter, the Appellant filed the Notice of Motion dated 8th April 2025 which is for determination alongside the aforementioned Respondents' Notice of Preliminary objection dated 7th May 2024.
4. In his application, the Appellant seeks the following orders:
 - a. Spent.
 - b. That, this Honourable Court be pleased to grant the Applicant/ Appellant leave to file the Appeal out of time and the attached Memorandum of Appeal dated 22nd March, 2024 be deemed to have been properly filed in Court.
 - c. That, costs of the application be in the course.



5. The application is premised on grounds on its face and on the Appellant's supporting affidavit. He avers that he is the registered owner of plot No. 154 R.L. No. 10389 having bought the same from the 2nd Respondent. Further, that Hon. Rawlings Liluma (SRM) delivered a judgment on 26th January, 2024 dismissing his suit and being dissatisfied with the said judgment, his Advocates filed an Appeal on 22nd March, 2024.
6. He claims that on 26th January, 2024 his advocates applied to the Executive Officer at the Chief Magistrates Court, for certified copies of the aforementioned judgment but they were issued with a defective copy of the judgment dated 26th January, 2023 instead of 26th January 2024 thus the delay in filing the Memorandum of Appeal was occasioned by the Court process and not by himself. He contends that the Appeal raises serious points of law and fact as the trial Court erred in law by failing to summon evidence from the local chief and the Chairman Homeway Poultry Farm Limited, who are very critical witnesses.
7. The Application and Notice of Preliminary Objection were canvassed by way of written submissions.

Submissions

8. The application and the Notice of Preliminary Objection were canvassed by way of written submissions. The Respondents submit that the Appeal is time barred and failure to file a claim within the prescribed time extinguishes the court's mandate. They argue that timelines set by statute are mandatory and non-compliance is fatal to the proceedings thus since the Appeal was filed out of time and without leave, it is fatal.
9. They also submit that parties are bound by their pleadings and as such, the Appellant's pleading that judgment was delivered by the trial court on the 26th of January 2023 should stand. To buttress their averments, they relied on the following decisions: *Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd* (1989) KLR; *Bedouin Enterprises Limited v Charles Njogu Loftus & another* [2015] eKLR; *Nicholas Kiptoo Arap Korir Salat v IEBC & 7 others* (2014) eKLR; *County Government of Mandera vs Chairperson, Public Service Commission and another* (2023) KESC 6 KLR and *Ogando v Watu Credit Limited & another* (Civil Suit E098 of 2022) [2024] KEHC 3074 (KLR) (14 March 2024) (Judgment).
10. On his part, the Appellant submits that the Preliminary Objection does not raise a pure point of law but rather questions that require verification of facts. He also reiterates that the delay in filing the Appeal was occasioned by the Chief Executive Officer. Milimani Commercial Court who failed to furnish him with a certified copy of the judgment as requested for on 26th January, 2024. Further, that he is exposed to lose land, thus his application should be allowed as his Appeal is merited.
11. To this end, he relied on the case of *Faustina Njeru Njoka v Kimunye Tea Factory Limited* (2022) KEELC 491 (KLR).

Analysis and Determination

12. Upon consideration of the instant Notice of Motion application and Notice of Preliminary Objection, the only issue for determination is whether the Appellant has made a case for extension of time within which to file an Appeal or if the Respondents' Preliminary Objection is merited.
13. From perusal of the proceedings herein, it emerged that the impugned judgment of the trial court which is the subject of these proceedings was delivered on 26th January 2024 and not 26th January 2023. Further, these proceedings were commenced on 26th March 2024.



14. Section 79G of the Civil Procedure Act provides for time of filing an Appeal from the subordinate Court to the High Court and stipulates thus:

‘Every appeal from a subordinate court to the High Court shall be filed within a period of thirty days from the date of the decree or order appealed against, excluding from such period any time which the lower court may certify as having been requisite for the preparation and delivery to the appellant of a copy of the decree or order: Provided that an appeal may be admitted out of time if the appellant satisfies the court that he had good and sufficient cause for not filing the appeal in time.’

15. The Court of appeal stated as follows on leave to appeal out of time in Edith Gichugu Koine vs. Stephen Njagi Thoithi [2014] eKLR:

“Nevertheless, it ought to be guided by consideration of factors stated in many previous decisions of this Court including, but not limited to, the period of delay, the reasons for the delay, the degree of prejudice to the respondent if the application is granted, and whether the matter raises issues of public importance, amongst others...”

16. In Nicholas Kiptoo Arap Korir Salat v Independent Electoral And Boundaries Commission & 7 Others [2014] eKLR, the Supreme court set out principles to guide the court in the extension of time as follows:

“The underlying principles a court should consider in exercise of such discretion should include:- a) Extension of time is not a right of any party. It is an equitable remedy that is only available to a deserving party at the discretion of the court; b)A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the court; c) Whether the court should exercise the discretion to extend time, is a consideration to be made on a case-by-case basis; d)Whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the court; e) Whether there will be any prejudice suffered by the respondent if the extension is granted; f)Whether the application has been brought without undue delay.”

17. The Supreme Court in the aforementioned Nicholas Kiptoo supra contended that seeking to extend time after an appeal had been filed out of time as in this case is tantamount to moving the Court to remedy an illegality. Nonetheless, it struck out and expunged the ‘appeal’ filed and extended the time within which to file a proper appeal.

18. In this instance, I note the Appellant filed an ‘Appeal’ out of time and against a defective judgement and now seeks to rectify the anomaly by applying for leave to file it on time. He further seeks to have the attached Memorandum of Appeal dated 22nd March, 2024 to be deemed to have been properly filed in Court. From a reading of section 79G above, it provides that an Appeal should be filed within a period of thirty days from the date of the decree or order appealed against. I note the Appellant seeks to blame the Executive Officer for indicating a wrong date in the judgement it was appealing against but he only raised this issue when the Respondents filed the instant preliminary Objection. It seems the Appellant seeks to blame a third party but I opine that he ought to have been vigilant while filing his Appeal. I further note that he did not lodge his Appeal within the requisite period.

19. I opine that the Appellant’s action of now seeking to extend time after filing an Appeal out of time with a wrongly dated judgement is tantamount to moving this Court to remedy an illegality. To my



mind, he should have withdrawn the instant Appeal first before filing the instant application together with a properly dated judgement.

20. In the foregoing, while relying on the legal provisions cited and associating myself with the decisions quoted, I find the instant Notice of Motion Application unmerited and will dismiss it. I find the instant Notice of Preliminary Objection merited and will allow it and proceed to strike out the instant Appeal with costs.

DATED SIGNED AND DELIVERED AT NAIROBI THIS 8TH DAY OF DECEMBER, 2025

CHRISTINE OCHIENG

JUDGE

In the presence of:

Mbichire for the Respondent

Court assistant: Vena

