



REPUBLIC OF KENYA

IN THE SUPREME COURT OF KENYA

(Coram: Koome CJ & P, Mwilu; DCJ & VP, Wanjala, Lenaola & Ouko SCJJ)

APPLICATION NO. E005 OF 2025

— BETWEEN —

JANE WANGECHI KIMANIAPPLICANT

-AND-

SIGONA JUA KALI ASSOCIATION1ST RESPONDENT

COUNTY GOVERNMENT OF KIAMBU2ND RESPONDENT

LAND CONTROL BOARD3RD RESPONDENT

REGISTRAR OF LANDS.....4TH RESPONDENT

THE ATTORNEY GENERAL.....5TH RESPONDENT

(Being an application for extension of time to lodge and transmit a Notice of Appeal to the Supreme Court & Stay of execution of the judgement, decree and consequential orders of the the Environment and Land Court, Thika, in ELC Case No. 131 of 2017)

Representation

Eric Naibei & Mr. Mbito for the Applicant
(Mbito & Co. Advocates)

Mr. Edwin Mugu for the 1st Respondent
(E.N. Mugu & Co. Advocates)

N/A for the 2nd Respondent

Ms. Mwalozi for the 3rd to 5th Respondents
(Office of the Attorney General)

RULING OF THE COURT

[1] UPON perusing the Notice of Motion dated 6th February 2025 and filed before this Court on 20th March 2025, by the applicant, seeking orders *inter alia* –

- a. **THAT** *this Honourable court be pleased to grant the applicant leave to file a Notice of Appeal dated 10th January, 2025 out of time over the Judgement delivered on 20th December, 2024 at the Court of Appeal in Civil Appeal No. 315 of 2019.*
- b. **THAT** *time be extended for admitting a lodged Notice of Appeal dated 10th January 2025 against the decision of the Court of Appeal in **Civil Appeal No. 315 of 2019.***
- c. **THAT** *there be a stay of execution of the judgement [and] decree of the Environment and Land Court Thika in **ELC Case No. 131 of 2017** pending the hearing and determination of this application.*

[2] **TAKING INTO ACCOUNT** the affidavit in support of the Motion sworn by Jane Wangechi Kimani and written submissions both dated 7th March 2025 and filed on 20th March 2025 to the effect that; the applicant is the registered proprietor of all that parcel of land known as Sigona/934 which she later subdivided into Sigona/930-965; she later sold and transferred these parcels to 30 families, who have occupied the land for over 20 years; the property also holds an administration block with a Chief's Office and a Police Station situated thereon; despite her alleged ownership of the said parcel of land, the applicant did not succeed in asserting her claim at the trial court and at the Court of Appeal, and is thus on the verge of losing her property; she attributes her failure to file the Notice of Appeal on time to the conduct of her previous advocates who failed to notify her of, and she only became aware of the Court of Appeal decision in mid- January 2025; that, through her current advocates on record, she lodged a Notice of Appeal at the Court of Appeal but the same was rejected by the Deputy Registrar for being filed out of time; her intended appeal has high chances of success and relies on this Court's decisions in **Mutheu Agatha vs Raheem & Others** SC Application No.

11 (E020) of 2021 and ***Salat v Independent Electoral and Boundaries Commission & 7 others*** [2014] KESC 12 (KLR) in reference to the court's unfettered discretionary powers to extend time; and further relies on the superior courts' decisions in ***Esther Wamaitha Njihia & 2 Others Vs Safaricom Ltd*** [2024] eKLR as well as ***Wachira Karani Vs Bildad Wachira*** [2016] eKLR to infer the fundamental duty of the court to do justice between the parties; and

[3] UPON CONSIDERING the respondent's grounds of objection, replying affidavit sworn by John Kamau Ndere, Secretary of the 1st respondent and submissions all dated 16th March 2025 and filed on 18th March 2025 wherein it submits that the applicant has not explained, satisfactorily, the delay in filing the Notice of Appeal between 20th December 2024 and 6th March 2025 when the application was filed; the applicant has not provided evidence as to how she became aware of the decision of the Court of Appeal from a relative, and that there is no evidence that the said Notice of Appeal was lodged and rejected in the Court of Appeal Registry since filing and communication at the Court of Appeal are not done orally. Further, that the applicant has not shown the limb under Article 163 (4) of the Constitution that the intended appeal is to be brought and therefore it is a non-starter. The 1st respondent furthermore cites the decisions in ***Nick Salat v Independent Electoral and Boundaries Commission & 7 others*** [2014] KESC 12 (KLR) and ***Kithangari & 4 others v Mutahi*** [2024] KESC 72 (KLR) to highlight the factors to be considered in an application for extension of time. ***Hermanus Phillips Steyn vs Giovanni Gnechi Ruscone*** Supreme Court Application No. 4 of 2012 is also cited to implore the need to seek certification from the Court of Appeal where a matter of general public importance is involved in any intended appeal to this court and ***Gaciani & 11 others v Kimanga & another*** (Application E004 of 2023) [2023] KESC 23 (KLR) has also been offered by the 1st respondent to submit that, whereas mistakes of an advocate ought not to be visited upon a litigant, there must be cogent and credible evidence for such a reason to be acceptable; and

[4] UPON ALSO CONSIDERING the applicant's rejoinder affidavit dated 25th March 2025 wherein she casts doubts as to the competence of John Kamau Ndere to swear the affidavit on behalf of the 1st respondent and also notes that the signatures sought in support of his capacity were forged and only relate to John Kamau Ndere's children. She further states that the decision of the trial court did not grant the 1st respondent the suit property or found it to be the legal owner; and that she stands most aggrieved by the determination of the Court of Appeal. She concludes by submitting that the application and intended appeal raise constitutional issues requiring this court's intervention and there is reasonable fear of her being committed to civil jail if a stay order is not granted; and

[5] BEARING IN MIND the provisions governing the filing of a Notice of Appeal set out under Rule 36 of the Supreme Court Rules, 2020, computation and extension of time provided under Rule 15 of the said Rules and this court's decision in *Salat v Independent Electoral and Boundaries Commission & 7 others* [2014] KESC 12 (KLR) wherein we set out the principles that a court should consider in exercise of its discretion on extension of time, as follows:

- i. *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;*
- ii. *A party who seeks extension of time has the burden of laying a basis thereof to the satisfaction of the court;*
- iii. *Whether the court should exercise the discretion to extend time, is a consideration to be made on a case to case basis;*
- iv. *Whether there is a reasonable reason for the delay and the delay should in any event be explained to the satisfaction of the Court;*
- v. *Whether there will be any prejudice suffered by the respondent if the extension is granted;*
- vi. *Whether the application has been brought without undue delay; and*

vii. *Whether in certain cases, like election petitions, public interest should be a consideration for extending time.*

[6] AND NOTING the pleadings and submission on record, **WE NOW OPINE AND DETERMINE** as follows:

- i. John Kamau Ndere has been a party to these proceedings on behalf of the 1st respondent since the trial stage and has consistently been described as the Secretary of the 1st respondent without any objection by the applicant. We are therefore satisfied that he possesses the requisite capacity to swear the replying affidavit.
- ii. Rule 36(1) of the Supreme Court Rules provides that a person who intends to make an appeal to this court shall file a Notice of Appeal within fourteen (14) days from the date of judgment or ruling which is the subject of appeal. We have in that regard considered the time taken from the delivery of the Court of Appeal's decision to the filing of the present application. The Court of Appeal rendered its decision on 20th December 2024 and the applicant's draft Notice of Appeal is dated 10th January 2025. The current application was filed on 20th March 2025 which is three months after the delivery of the Court of Appeal judgment and two months after the said Notice was dated but not filed.
- iii. The applicant asserts that she became aware of the Court of Appeal's determination in mid-January 2025. However, she has not provided any evidence to substantiate this claim. She further attributes her failure to file the Notice of Appeal within the prescribed time to the alleged inaction of her former advocates, specifically their failure to update her on the progress of the case and ultimately delivery of Court of Appeal judgment. She has however not produced any correspondence or documentation demonstrating her attempts to

inquire into the status of her matter, which would support her assertions against her former legal representatives. In that context, in ***George Kang'ethe Waruhiu v Esther Nyamweru Munene & another*** Civil Application No 18 of 2020 [2021] ekLR we stated that it is not enough for a party to simply blame the advocates on record for all manner of transgressions. Courts have always emphasized that parties have a responsibility to show interest in and to follow up on their cases even when they are represented by counsel, and it does not matter whether the party is literate or not.

- iv. Additionally, there is an unexplained delay of approximately two months from the time the applicant purportedly became aware of the appellate court's decision to the date of filing the present application. No satisfactory explanation has been offered for this delay.
- v. We further observe that the dispute before both the trial court and the Court of Appeal was confined to the issue of ownership of parcel number L.R Sigona/934. At no point did the parties raise any issues concerning the interpretation or application of the Constitution, a position taken and explained by the 1st respondent without a satisfactory answer by the applicant. The applicant has equally failed to demonstrate that the proceedings before the superior courts involved any constitutional questions or took a trajectory necessitating constitutional interpretation or application. To allow any extension of time without this issue being addressed would only take the court on an expedition of no useful purpose.
- vi. Noting that the Notice of Appeal ought to have been filed on or before 4th January 2025, the instant application has instead been filed 62 days after the said date. No satisfactory explanation has been provided for such delay. We further observe that the prayers for '*a stay of execution of the judgement decree of the Environment and Land*

Court Thika in ELC Case No. 131 of 2017 is inherently misplaced. This is because the intended appeal ought to be directed and filed against the decision of the Court of Appeal, not the trial court. Moreover, this prayer is contingent upon the grant of leave to file the Notice of Appeal out of time, a relief we have declined. Accordingly, we find no merit in the application before us and hereby dismiss it.

- vii. The 1st respondent, being the successful party, is entitled to the costs of the application in line with the principle that costs follow the event, as articulated in ***Jasbir Singh Rai & 3 Others v. Tarlochan Singh Rai Estate & 4 Others***; SC Petition No. 4 of 2012 [2013] eKLR.

[7] **CONSEQUENTLY** and for the reasons afore-stated, we make the following Orders:

- i. The applicant's Notice of Motion dated 6th February 2025 and filed on 20th March 2025 is hereby dismissed.***
- ii. The 1st respondent is hereby awarded costs of the application as against the applicant.***

It is so ordered.

DATED and DELIVERED at NAIROBI this 16th day of May, 2025.

.....
M.K. KOOME
CHIEF JUSTICE & PRESIDENT OF
THE SUPREME COURT OF KENYA

.....
P.M. MWILU
DEPUTY CHIEF JUSTICE & VICE PRESIDENT
OF THE SUPREME COURT OF KENYA

.....
S.C. WANJALA
JUSTICE OF THE SUPREME COURT

.....
I.LENAOLA
JUSTICE OF THE SUPREME COURT

.....
W. OUKO
JUSTICE OF THE SUPREME COURT

I certify that this is a true copy of the original

REGISTRAR

SUPREME COURT OF KENYA

