



**REPUBLIC OF KENYA**

**IN THE SUPREME COURT OF KENYA**

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

**APPLICATION NO. E002 OF 2026**

– BETWEEN –

**SANIYA ABDALLA MOHAMED**

**(Suing as the Legal Representative of the Estate**

**of ABDALLA MOHAMED ABDALLA (Deceased) ..... APPLICANT**

– AND –

**THE COUNTY GOVERNMENT OF MOMBASA ..... RESPONDENT**

**NATIONAL LAND COMMISSION..... 1<sup>ST</sup> INTENDED INTERESTED PARTY**

**ATTORNEY GENERAL ..... 2<sup>ND</sup> INTENDED INTERESTED PARTY**

**SBM BANK KENYA LIMITED ..... 3<sup>RD</sup> INTENDED INTERESTED PARTY**

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*(Being an application for extension of time to file a Notice of Appeal and an appeal against the Judgment of the Court of Appeal at Mombasa (**Visram, Karanja & Kiage, J.J.A.**) dated 7<sup>th</sup> March 2019 in Civil Appeal No. 114 of 2018)*

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Representation:

Mr. Benedict Odhiambo Oloo for the Applicant  
*(Benedict Odhiambo Oloo & Co. Advocates)*

Mr. Murtaza Tajbhai for the Respondent  
*(Office of the County Attorney)*

**RULING OF THE COURT**

**[1] UPON PERUSING** the Notice of Motion dated 24<sup>th</sup> December, 2025 and filed on 14<sup>th</sup> January, 2026 pursuant to Articles 10, 23(3), 40, 47, 50(1) & 163(4)(a) of the

Constitution; Sections 3, 21(2), 23A & 24 of the Supreme Court Act, Cap 9B; Rules 21, 23, 26, 32 & 33 of the Supreme Court Rules, 2020 wherein the applicant seeks *inter alia*:

“ ...

- b. *THAT this Honourable Court be pleased to extend the time for filing and service of the Notice of Appeal and appeal against the judgment of the Court of Appeal in Civil Appeal No. 114 of 2018 delivered on 7<sup>th</sup> March 2019.*
- c. *THAT pending the hearing and determination of the intended appeal, a conservatory order be issued restraining SBM Bank (Kenya) Limited (the intended 3<sup>rd</sup> interested party) from exercising its statutory power of sale over the suit properties.*
- d. *THAT leave be granted to enjoin the intended interested parties to the intended appeal.*
- e. *THAT the draft Notice of Appeal and appeal annexed hereto be deemed as duly filed upon payment of requisite fees.”; and*

**[2] COGNISANT** of the pertinent facts which culminated in this Motion *to wit*, that Abdalla Mohammed Abdalla (the deceased) filed a suit in the Environment and Land Court (ELC), **ELC Case No. 285 of 2015**, claiming that on 8<sup>th</sup> September 2015, the respondent trespassed on his property described as Mombasa/Block XVI/583, 598, 606, 607, 608, and 609 (the suit properties), demolished the structures erected thereon and constructed an access road on a portion thereof. According to the deceased, the respondent’s action was tantamount to compulsory acquisition of the suit properties without regard to due process and compensation. Consequently, the applicant sought a declaration that the respondent’s action amounted to trespass; an order that the respondent do remove the road (cabro blocks) and restore the suit properties to their previous state; and, in the alternative, that the respondent do pay Kshs. 56,000,000/= to the applicant and acquire the suit properties for the said road.

In response, the respondent contended that the suit properties had been earmarked as a road reserve prior to the registration of the titles thereof in favour of the applicant; the applicant's title over the suit properties was questionable; if any structures were demolished, which it denied, it was because they were erected without its approval and on a road reserve; and

**[3] NOTING** that by a judgment dated 24<sup>th</sup> April 2018, the ELC (*Yano, J.*) found that no evidence had been adduced to impeach the applicant's title to the suit properties and therefore, the respondent's action constituted trespass; nonetheless, that the evidence on record established that prior to the said road construction, the suit properties were used as an access road by members of the public including the applicant to access his other business and residential premises; the valuation reports produced by the applicant equally indicated that there were no structures on the suit properties prior to the road construction by the respondent; the applicant had not been deprived of the use and benefit of the suit properties as he continued to utilize them as security for obtaining loan facilities from banks; and that the court could not compel the respondent to acquire the suit properties. In the end, the ELC declined to issue an order directing the respondent to restore the properties to the previous state on the basis that it would be superfluous, taking into account that it had always been used as an access road or grant the alternative order of compensation. Subsequently, the Court of Appeal (*Visram, Karanja & Kiage J.J.A.*), by a judgment dated 7<sup>th</sup> March, 2019 (impugned judgment) in **Civil Appeal No. 114 of 2018** dismissed the applicant's appeal and upheld the ELC decision; and

**[4] UPON CONSIDERING** the applicant's grounds, affidavits and submissions in support of the Motion, the gist of which is that, between January 2019 and January 2021, the deceased was undergoing intensive medical treatment for a terminal illness and as such, was incapable of giving instructions pertaining to the impugned judgment; ultimately, the deceased passed away on 18<sup>th</sup> January 2021, and by a Grant of Probate which was confirmed on 21<sup>st</sup> February, 2023, the applicant was appointed

as the administrator of the deceased's estate; thereafter, in 2023 and 2024, the applicant made attempts to settle the matter with state offices including the National Land Commission and county authorities; the applicant also filed judicial review proceedings in the ELC, **JR No. E002 of 2023**, seeking an order of *mandamus* compelling the respondent to remove the cabro blocks from the suit properties, which was dismissed; the deceased's estate has not been indolent; and the intended appeal raises weighty issues of constitutional interpretation and application relating to Article 40 on protection of property rights and Article 23(3) on appropriate reliefs. Further, the applicant posits that by a letter dated 15<sup>th</sup> December 2025, SBM Bank, the 3<sup>rd</sup> intended interested party, demanded payment of an outstanding loan amount of Kshs. 55,000,000/= failing which it would proceed to exercise its statutory power of sale over the suit properties; and the said demand notice clearly indicates that the construction of the road rendered the suit properties economically unviable. To that extent, the applicant contends that the said bank ought to be joined to the intended appeal alongside the 1<sup>st</sup> and 2<sup>nd</sup> intended interested parties who are necessary parties to enable effective adjudication of the dispute; and

**[5] TAKING INTO ACCOUNT** the respondent's position that the impugned judgment having been delivered on 7<sup>th</sup> March 2019, the Notice of Appeal and appeal ought to have been lodged on 21<sup>st</sup> March 2019 and 20<sup>th</sup> April 2019 respectively; the deceased's medical reports do not demonstrate whether he was mentally incapacitated from issuing instructions; the deceased was duly represented by an advocate before the superior courts below; the applicant has admitted that instead of seeking extension of time to file the Notice of Appeal after obtaining the Grant of Probate she opted to file the JR proceedings before the ELC, evincing forum shopping; there is undue delay of over six years in lodging the Motion after the impugned judgment; the reasons advanced for the delay are inexcusable; the prayer for a conservatory order has no basis since no appeal has been lodged in this Court; and the applicant cannot seek orders against a person who is yet to be joined to the appeal; and

**[6] UPON DELIBERATIONS** on the Motion and the rival arguments, **WE OPINE** as follows:

- i. Under Rule 31(1) of this Court's 2012 Rules (now repealed but whose substance is replicated under Rule 36(1) of the 2020 Rules), which were applicable at the time the impugned judgment was rendered, a party was and is still required to file a Notice of Appeal within fourteen (14) days of the impugned decision, and thereafter, pursuant to Rule 33(1) of the 2012 Rules (a replica of Rule 38(1) of the 2020 Rules) lodge an appeal within thirty (30) days from the date of filing the Notice of Appeal.
- ii. It is common ground that the impugned judgment of the Court of Appeal was delivered on 7<sup>th</sup> March 2019, and therefore, the deceased was required to file the Notice of Appeal and appeal on or before 21<sup>st</sup> March 2019 and 20<sup>th</sup> April 2019 respectively, but failed to do so. It is on that basis that the applicant herein seeks extension of time to lodge the same. As this Court noted in ***Salat Vs Independent Electoral and Boundaries Commission & 7 Others*** [2014] KESC 12 (KLR) (***Salat case***), the extension of time is not a right of a party and lies within the discretion of the Court. The Court equally set out the guiding principles of exercising that discretionary power. Has the applicant met those parameters to warrant this Court to exercise its discretion in her favour?
- iii. To begin with, the applicant's explanation for the delay is that there were intervening events that rendered it impossible to lodge the Notice of Appeal and the appeal on time. For instance, she submitted that the deceased was diagnosed with a terminal illness in January 2019, prior to the delivery of the impugned judgment and underwent medical treatment up until 18<sup>th</sup> January, 2021. In this regard, the respondent argues that the medical documents annexed to the Motion do not indicate that the deceased suffered any mental incapacity that would hinder him from giving instructions to file an appeal; and that in any event, he was represented by an advocate in the superior courts below. To this extent, we

are inclined to give the benefit of the doubt to the applicant, being mindful of the mental, physical, and financial toll occasioned by terminal illness.

- iv. It goes without saying that the applicant had no *locus standi* to seek extension of time on behalf of the deceased's estate until she was appointed as an administrator thereto. We cannot help but note that the grant of probate was issued to the applicant as the executor of the deceased's will on 18<sup>th</sup> November 2021 and later confirmed on 21<sup>st</sup> February, 2023. Be that as it may, the applicant has not offered any explanation as to why she failed to file the current Motion either upon issuance or confirmation of the grant. In point of fact, the applicant deposed in detail on the attempts she had made after the grant was confirmed to settle the dispute with state offices, including the National Land Commission. What is more, she filed **JR No. E002 of 2023** which was dismissed on 20<sup>th</sup> June 2023 by *Matheka, J.* on the ground that it was *res judicata*. We also understand the applicant contends that she was unable to file the current Motion between September 2023 and 2025 owing to the birth of her daughter and the attendant responsibilities of childcare during that period.
- v. It is clear from the foregoing that upon issuance and confirmation of the grant of probate, the applicant did everything else save for seeking extension of time to file the Notice of Appeal against the impugned judgment. Moreover, the applicant filed the current Motion under a certificate of urgency after the bank issued notice to exercise its statutory power of sale over the suit properties vide a letter dated 15<sup>th</sup> December 2025. It would appear that the Motion which was filed on 14<sup>th</sup> January 2026 was an afterthought. Consequently, we find that the applicant has not provided a cogent explanation for the delay from 18<sup>th</sup> November 2021, when the grant of probate was issued in her favour up to 14<sup>th</sup> January 2026, when the Motion was filed, that is, a delay of four years and one month. In the circumstances, we find that the said delay is inordinate, and we decline to exercise our discretion in extending time for filing the intended Notice of Appeal and appeal.

vi. It follows therefore, that in the absence of a Notice of Appeal, which is a jurisdictional prerequisite, we cannot move a step further as far as the other reliefs sought are concerned. In any event, Rule 31 (2) of this Court's Rules also precludes us from entertaining the other reliefs in the absence of an appeal before this Court. The upshot of the foregoing is that the Motion lacks merit and is hereby dismissed.

vii. Taking into account this Court's decision in **Rai & 3 others Vs Rai & 4 others** [2014] KESC 31 (KLR), the applicant shall bear the costs of the Motion.

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

- i. The Notice of Motion dated 24<sup>th</sup> December 2025 and filed on 14<sup>th</sup> January, 2026 is hereby dismissed.***
- ii. The applicant shall bear the costs of the Motion.***

It is so ordered.

**DATED and DELIVERED at NAIROBI this 19<sup>th</sup> day of June, 2026.**

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**M. K. KOOME**

**CHIEF JUSTICE & PRESIDENT**

**OF THE SUPREME COURT**

.....

**P.M. MWILU**

**DEPUTY CHIEF JUSTICE &**

**VICE PRESIDENT OF THE**

**SUPREME COURT**

.....

**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**

