



REPUBLIC OF KENYA

IN THE SUPREME COURT OF KENYA

(Coram: Mwilu; DCJ & VP, Wanjala, Lenaola, Ouko & Warsame, SCJJ)

APPLICATION NO. E006 OF 2026

— BETWEEN —

GEORGE GATHUKI NGANGA APPLICANT

— AND —

GASKI INVESTMENT LIMITED..... 1ST RESPONDENT

THE REGISTRAR OF TITLES..... 2ND RESPONDENT

THE CHIEF LAND REGISTRAR.....3RD RESPONDENT

(Being an application for extension of time within which to file and serve a Notice of Appeal and stay of execution against the Judgment and Order of the Court of Appeal at Nairobi (Ochieng, Achode, Muchelule JJA) dated 30th May 2025 in Nairobi Civil Appeal No 519 of 2019)

Representation:

*Wangira Okoba & Company Advocates for the Applicant
Gitonga Muriuki & Company Advocates for the 1st Respondent
The Hon. Attorney General for the 2nd and 3rd Respondents*

RULING OF THE COURT

[1] UPON PERUSING the Notice of Motion filed by the applicant on 12th June, 2026, brought pursuant to Article 163(4)(a) and (b) of the Constitution of Kenya 2010 and Rules 15(2) and 3(5) of the Supreme Court Rules, 2020, seeking
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extension of time within which to file and serve the Notice of Appeal; temporary conservatory orders staying execution of the Judgment and consequential orders of the Court of Appeal; leave to file the Petition and record of appeal out of time; and costs of the application; and

[2] UPON CONSIDERING the applicant's grounds on the face of the application and affidavit sworn by *George Gathuki Nganga* on 2nd February, 2026 together with written submissions dated 14th May, 2026, in which the applicant contends that he is the original allottee of land known as Thika Municipality Block 6/1062, which was allocated to him in 1992 as UNS Residential Plot "A" Thika Municipality and which was registered in his name on 10th April 2012; that he was dissatisfied with the decision of the Court of Appeal delivered on 30th May 2025 dismissing his appeal and finding that the 1st respondent is the sole bona fide registered owner of the suit property and is entitled to the absolute ownership thereof under Article 40(1) of the Constitution; that the said decision was delivered whilst the applicant was in the United States of America for medical treatment and had lost contact with his advocates; that upon his return to Kenya, his former advocates declined to proceed with the matter and he was consequently compelled to retain alternative legal counsel; that the delay in filing the instant application was not deliberate but was occasioned by his medical condition and the failure of his former advocates to timeously notify him of the impugned decision; that the intended appeal would raise weighty constitutional and public interest issues touching on the integrity of public records, conflict of interest by public officials, and the right to property; and

[3] UPON CONSIDERING the Replying Affidavit sworn by *Silas Kiogora Mburugu* on 29th June 2026 on behalf of the 1st respondent, together with written submissions dated 2nd July 2026, the 1st respondent opposes the application and submits, *inter alia*, that the application is incompetent and an abuse of court process; that the dispute concerns ordinary land allocation procedures and does not raise matters of general public importance warranting the Court's jurisdiction

under Article 163(4)(b) of the Constitution as established in ***Steyn Vs Gnechi-***
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Ruscone [2012] KECA 259 (KLR); that the applicant has impermissibly attempted to elevate what is fundamentally a straightforward civil property matter to a constitutional question; that the application is fatally defective as it invokes both jurisdictional avenues of this Court simultaneously, which are mutually exclusive; that the delay of nearly one year from delivery of the Court of Appeal judgment to the filing of this application is inordinate and unsubstantiated; that the applicant's reliance on allegations are mere excuses and lack credibility and that the application is devoid of merit and should be dismissed summarily; and

[4] TAKING INTO ACCOUNT the Grounds of Objection dated 23rd July 2026 filed on behalf of the 2nd and 3rd respondents by the Attorney General, together with their written submissions dated 24th July 2026 in opposition to the application, where they submit inter alia, that under Rule 36(1) of the Supreme Court Rules, 2020, the filing of a Notice of Appeal within the prescribed period is the gateway to this Court's jurisdiction; that without a duly filed Notice of Appeal, no conservatory relief including stay of execution can issue, as established in **Salat Vs Independent Electoral and Boundaries Commission & 7 others [2014] KESC 12 (KLR)**; that under Section 23A of the Supreme Court Act, conservatory relief can only be granted where a party has instituted a petition of appeal as of right under Article 163(4)(a) of the Constitution or obtained certification under Article 163(4)(b) and instituted a petition, conditions which are not presently met; that the applicant has not demonstrated that the question of constitutional interpretation and application formed the basis of the lower courts' determinations as required by the principles enunciated in **Independent Electoral & Boundaries Commission Vs Cheperenger & 2 others [2015] KESC 2 (KLR)**; that the delay of over twelve months is inordinate and inadequately justified in light of Article 159(2) of the Constitution which mandates timely justice; that the applicant's allegations of being out of the country for medical reasons are unsupported by cogent evidence; that extension of time is a discretionary power and the applicant has failed to lay a satisfactory basis for its

exercise; that extension would destabilise the respondents' accrued rights; and that the application should be dismissed with costs; and

[5] NOTING THAT this Court, under Rule 15(2) of the Supreme Court Rules, 2020, has unfettered discretionary powers to extend the time limited by the Rules or by any of its decisions, and restating the guiding principles established in ***Salat Vs 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-by-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. *In certain cases, such as election petitions, public interest should be a consideration for extending time.*

[6] APPLYING these principles to the facts before us, we observe as follows:

- i. The Court of Appeal delivered its judgment on 30th May 2025. The instant application was filed on 12th June 2026, representing an inordinate delay of approximately one year which requires satisfactory explanation. The applicant relies on three factors to explain this delay: first, that he was in the United States of America for medical attention when the judgment was delivered; second, that due to travelling abroad he lost his telephone line and

contact details of his former advocates; and third, that upon his return to Kenya, his previous advocates refused to take up the matter, forcing him to seek alternative legal representation.

- ii. Similarly, the applicant's allegation that loss of his telephone line prevented communication with his former advocates is insufficient. In this modern era, contact with legal representatives does not depend solely on telephone communication. Email correspondence, postal mail, and office visits remain readily available. The applicant has not demonstrated that he attempted any of these alternative means of contacting his former advocates or that he inquired about the status of his appeal. As we held in ***George Kang'ethe Waruhiu Vs Esther Nyamweru Munene & another*** [2021] KESC 42 (KLR), parties bear personal responsibility to show interest in and to follow up on their cases, even when represented by counsel. The applicant cannot rely on a blanket assertion of lost contacts to absolve himself of this fundamental obligation.
- iii. Lastly, even accepting the applicant's narrative that his former advocates refused to proceed with the matter, a critical question remains unanswered: why did the applicant wait until 12th June 2026 to file this application, having become aware of the judgment and having returned to Kenya months earlier, particularly when his former advocates had refused to assist? The affidavit suggests that the applicant instructed new counsel in February 2026, yet nearly four months passed before the application was filed. As we emphasized in ***County Executive of Kisumu Vs County Government of Kisumu & 8 others*** [2017] KESC 16 (KLR), an applicant in an application for extension of time must satisfactorily declare and explain the whole period of delay to the Court. Extension of time is an equitable remedy, the grant of which involves the exercise of judicial discretion and that equity aids the vigilant and not the indolent.

[7] FOR THE AFORESTATED REASONS, we find that the applicant's explanation for the inordinate delay is neither reasonable nor satisfactory. We are therefore persuaded that in the circumstances, the instant application lacks merit. Consequent upon this finding, the applicant's prayer for extension of time and stay of execution cannot be granted.

[8] ACCORDINGLY, IT IS ORDERED THAT:

- 1. The Notice of Motion filed on 12th June 2026 is hereby dismissed;***
- 2. The applicant shall bear the costs of this application.***

DATED and DELIVERED at NAIROBI this 25th day of September, 2026.

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

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S.C. WANJALA
JUSTICE OF THE SUPREME COURT

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I. LENAOLA
JUSTICE OF THE SUPREME COURT

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W. OUKO
JUSTICE OF THE SUPREME COURT

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M. WARSAME
JUSTICE OF THE SUPREME COURT