



**Sonkoe & 5 others v Nayioma (Environment and Land Appeal  
E003 of 2025) [2025] KEELC 1401 (KLR) (20 March 2025) (Ruling)**

Neutral citation: [2025] KEELC 1401 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KILGORIS  
ENVIRONMENT AND LAND APPEAL E003 OF 2025  
MN MWANYALE, J  
MARCH 20, 2025**

**BETWEEN**

**JULIUS SONKOE ..... 1<sup>ST</sup> APPELLANT  
KITIJNGAI SONKOE ..... 2<sup>ND</sup> APPELLANT  
SALIM SONKOE ..... 3<sup>RD</sup> APPELLANT  
LEMISO SONKOE ..... 4<sup>TH</sup> APPELLANT  
SAMWEL SONKOE ..... 5<sup>TH</sup> APPELLANT  
DICKSON SONKOE ..... 6<sup>TH</sup> APPELLANT**

**AND**

**SAMSON NAYIOMA ..... RESPONDENT**

**RULING**

1. The Ruling is in respect of the Application dated 19.01.2025 which seeks leave to appeal out of time and a stay of execution of the Judgment delivered on 30.09.2024 in Kilgoris CMELC Case No. E022 of 2021.
2. The grounds in support of the application are interalia that
  - i. Judgment was delivered on 30.09.2024 and the Advocates on record did not inform the Applicant of the outcome of the Judgment.
  - ii. The Applicant only learnt of the outcome when the Land Registrar and Surveyor made a visit to the Parcel No. Transmara/Shartuka/324 and Transmara/Shartuka/147 in December 2024 to implement the order that emanated from the impugned Judgment that the Intended Appellants instructed their current Advocates to file the Memorandum of Appeal; and are thus desirous of filing memorandum out of time hence the prayer for leave to be granted.



3. The Application is further supported by the supporting affidavit of Salim Sonkoe who reiterates the grounds in support of the application and has annexed copies of the impugned Judgment and the proposed Memorandum of Appeal.  
The deponent depones of his belief that the Intended Appeal is meritorious and that eviction from the suit property is irreversible as the structures shall be demolished.
4. That if stay orders are not granted the Appeal would be rendered nugatory; and that no prejudice would be suffered by the Respondent.
5. The Application is opposed by the Replying Affidavit of the Respondent who depones being the Administrator Ad Litem of the Estate of Kono Ole Nayioma and depones that he was the successful litigant before the Chief Magistrates Court having filed suit seeking eviction of the Defendants now Appellants, and he annexed a copy of the Judgment and decree interalia, together with summons.
6. That the prayer for leave to appeal is baseless as the Judgment was delivered in the presence of the Applicants Advocate and no evidence had been exhibited to show that the Applicant had inquired about the Judgment and there is no justification for the leave sought by the Applicant.
7. The Application proceeded by way of oral submissions, Mr. Kiprotich submitted placing reliance on Section 16 (A) (2) to lodge an appeal out of time, that the delay to file the Appeal was occasioned by the previous Advocates and the Mistake of the Advocate should not be visited on the Appellant. Had the Appellants known of the Judgment, they would have appealed in time; the court should look at the broader interests of administration of justice and that no prejudice would be occasioned to the Applicants and he urged the court to exercise discretion in accordance with Article 159.
8. He further submitted that the Appeal is meritorious and the Appellants will be greatly prejudiced.
9. On his part Mr. Ochwangi for the Respondent placed reliance on the Replying affidavit and submitted that the suit property does not belong to the Appellants and they thus could not lose what did not belong to them. That the Memorandum of Appeal was filed by a stranger in contravention of order 9 Rule 9, and that no good grounds were advanced in respect of the prayer for the stay.
10. In brief rejoinder, the Applicants advocates submitted that the consent was filed together with Memo of Appeal on 19.01.2025, and the Memo of Appeal had not yet been admitted; that he had complied with order 9 Rule 9, and that paragraph 59 of Judgment showed that the Defendants were in occupation, hence they would suffer loss if stay is not granted.
11. The court notes from the application the following undisputed issues;
  - i. That the Applicants as Defendants were represented by a different firm of Advocates in the proceedings before the lower court.
  - ii. That the Judgment delivered on 30<sup>th</sup> September 2024 was delivered in the presence of Mr. Ochwangi for the plaintiffs now Respondents and Mr. Shira for the Defendants now Applicants intended Appellants.

### **Issues For Determination**

12. On issues for determination the court frames the following as issues for determination;
  - i. Whether or not the Applicants Advocates is properly on record in view of order 9 Rule 9 of the Civil Procedure Rules?
  - ii. Whether the application is merited?



- iii. What prayers ought to issue?

### **Analysis And Determination**

13. On issue number 1, Mr. Ochwangi submits that there was non-compliance with Order 9 Rule 9 of the Civil Procedure Rules hence the application was filed by a stranger after Judgment.
- Mr. Kiprotich submitted that he was properly on record, having filed a consent to come on record simultaneously with this application.
14. This application for leave to enlarge time and for stay of execution was filed before this court pursuant to the draft Memorandum of Appeal. Whereas different superior courts have interpreted the provisions of Order 9 Rule 9 differently, the court rules that this matter is not an extension of the matter before the lower court, it is a new matter and whereas the provisions of Order 9 Rule 9 would undoubtedly apply in an application filed post Judgment before, the lower court, there is no requirement for the same in a fresh matter like this Appeal before court.
15. In arriving at the said conclusion, I am guided by the Court of Appeal decision in the case of Tobais M. Wafubwa Vs. Ben Butail (201 7) eKLR where the Court of Appeal considered this issue and held inter alia, "we are of the same view and would adopt the same approach in its entirety in matters concerning appeal. Once a judgment is entered, save for matters such as application for review or execution or stay of execution, inter alia, an Appeal to an Appellate Court is not a continuation of proceedings in the lower court but a commencement of new proceedings in another court; were different rules may be applicable for instance, the Court of Appeal Rules 2010 and the Supreme Court Rules 2010. Parties should therefore have the right to choose whether to remain with the same counsel or to engage another counsel on appeal without being required to file a Notice of Change of Advocates or to obtain leave from the concerned court to be placed on record in substitution of the previous Advocates. "
16. The above position settles issue number which is answered that there was no need for compliance with order 9 Rule 9 of the Civil Procedure Rules this being a new proceeding.
17. On issue number 2, in order to determine the prayer for extension of time, the court shall...consider and examine the application in line with the principles of extension of time as laid down in the case of Leo Silla Mutiso vs. Rose Hellen Wangari Nairobi Civil Application 255/1997 where the court held inter alia; "it is now well settled that the decision whether or not to extend the time for appealing is essentially discretionary, it is also settled that in general the matters which the court takes into account in deciding whether to grant an extension of time are first the length of the delay, secondly the reason for the delay, the chances (possibly) of the appeal succeeding if the application is granted and fourthly, the degree of prejudice to the Respondent if the application is granted. "
18. On the length of the delay, the application was filed 2<sup>1</sup> /2 months, late, which the court considers not a very inordinate delay.
19. The reasons for the delay being non-communication from the previous Advocates, whereas this reason does not seem very compelling, the court considers that the Applicants once they become aware of the Judgment when the Land Registrar visited the suit property in December 2024 and they filed the application in January 2025, is prepared to accept that there was non-communication from the previous Advocates and thus finds the reasons sufficient.
20. Having considered the draft Memorandum of Appeal, and without dwelling into its merits or otherwise, the court finds that the same raises an arguable appeal.



21. On the fourth conditions, the Respondent is not in occupation of the disputed parcel while the Applicants are in occupation, the court finds that the Applicants thus will be more prejudiced than the Respondent whose prejudiced will be a delay in the execution.
22. Having examined the four conditions as set out in the Leo Silla Mutiso decision; the court finds that the Applicant has made out a case for extension of time to file an Appeal and that the said prayer is allowed.
23. On the second prayer for stay of execution of the decree, the court considers the principles set out at order 42 Rule 6 of the Civil Procedure Rules.
24. On the first aspect of the application being filed timeously, the court has found that the application was filed two and half months late hence not timeously.  
On the aspect of substantial loss, if the eviction is carried out, there is likely substantial loss to occur.
25. On this prayer the Applicant having not satisfied the first condition, declines the prayer of stay of execution as prayed but orders for maintenance of the current status quo, pending hearing and determination of the Appeal in order to preserve the subject matter of the Appeal.

### **Disposition**

26.

- (i) The Applicants is granted leave to file the Memorandum of appeal within 14 days from today. The Applicants shall peruse typed proceedings and file the Record of Appeal within 60 days after filing of the Memorandum of Appeal.
- (ii) An order of maintenance of status quo pending hearing and determination of the Appeal is hereby issued in respect of Transmara/Shartuka/324 and the status quo on the ground being that the Applicants to remain in possession while the status on the register being that the suit property to remain in the name of the current registered owner Kono Ole Koyoima.
- (iii) Costs of this application are awarded to the Respondents.
- (iv) Mention on 05.06.2025 to confirm filing of the Record of Appeal and to take further directions; on the Appeal.

**DATED AND DELIVERED AT KILG HIS 20<sup>TH</sup> DAY OF MARCH 2025.**

**HON. M.N. MWANYALE**

**JUDGE**

In the presence of

C/A Emmanuel/Slyvia

Mr. Kiprotich for Applicants

Mr. Ochwangi for Respondents

