



REPUBLIC OF KENYA



**Ladhani v Mohamed (Environment & Land Case E006 of 2024)
[2025] KEELC 3466 (KLR) (30 April 2025) (Ruling)**

Neutral citation: [2025] KEELC 3466 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT & LAND CASE E006 OF 2024**

**JO OLOLA, J
APRIL 30, 2025**

BETWEEN

KARASAN DEVEJI LADHANI APPLICANT

AND

AJIRA ABDULLATIF MOHAMED RESPONDENT

RULING

1. By the Notice of Motion dated 29th November, 2024, Karsan Deveji Ladhani (the Applicant) prays for the following orders:
 1. Spent
 2. That the Honorable Court be pleased to grant the Applicant an extension of time to file an Appeal against the above named judgment of the Learned Principal Magistrate Honorable G. Sogomo delivered on 23rd August, 2024;
 3. Spent
 4. That there be a temporary stay of execution of the Judgment and/or decree issued on 23rd August, 2024 in E&L No. 31 of 2022; Ajira Abdulatif Mohamed v Karisa Devji Ladhani pending the hearing and determination of the intended Appeal and
 5. That such order as to costs as may appear to be just be made on the application
2. The application is supported by an Affidavit sworn by the Applicant's Counsel on record Mr. Awino Joshua and is premised inter alia on the grounds that:
 - i. On 23rd August, 2024, Judgment was delivered against the Applicant but efforts to get copies of the judgment bore no fruits until 4th September, 2024 when the Applicant's Advocate received a handwritten copy of the same;



- ii. By a letter dated 23rd October, 2024, the Respondent has threatened to commence eviction of the Applicant on 30th November, 2024;
 - iii. Unless the Court intervenes immediately and issues a stay order, the Applicant is at a real imminent risk of being evicted and suffering a huge loss which would render the Intended Appeal nugatory;
 - iv. The delay herein has been occasioned by the Applicant's Advocate not receiving judgment notice on time and failure to get a copy of the Judgment in good time, and
 - v. The Applicant is ready and willing to provide appropriate security for the implementation of the said orders including depositing the decretal sum in a joint interest earning account as the court may deem just.
3. Ajira Abdulatif Mohamed (the Respondent) is opposed to the application. In his Replying Affidavit sworn on 16th December 2024, the Respondent avers that he is the registered owner of the suit property known as Mombasa/Mwembelegeza/221 having purchased the same.
 4. The Respondent further avers that the trial court had allowed his claim and granted eviction orders against the Applicant on 23rd August, 2024. He asserts that the present application is an afterthought brought after an unexplained inordinate delay.
 5. It is further the Respondent's case that he is the one who has suffered and continues to suffer irreparable damages and emotional distress for having been denied access to a property he had purchased.
 6. I have carefully perused and considered both the application as well as the response thereto. I have similarly perused and considered the submissions placed before the court by the Learned Advocates representing the parties.
 7. By this application before the court, the Applicant urges the Court to be pleased to grant him an extension of time within which to lodge an Appeal against a Judgment delivered by the Lower Court on 23rd August, 2024. In addition, the Applicant prays for an order of stay of execution pending the hearing and determination of the intended Appeal.
 8. The Respondent on his part is opposed to the grant of the said orders. It is the Respondent's case that the delay in bringing the present application is inordinate and that the Applicant has failed to explain the reasons for such delay. It is further the Respondent's case that he is the one suffering loss and damage as he has been kept away from property that he had duly purchased.
 9. Section 79 G of the *Civil Procedure Act* provides as follows:

“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 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.”
 10. It is clear from the wording of the said Section 79G of the *Civil Procedure Act* that before the Court considers extension of time, the Applicant must satisfy the Court that he has a good and sufficient cause for seeking to file the appeal out of time.



11. Considering the principles applicable in such a situation in *Nicholas Kiptoo Korir Arap Salat v IEBC and 7 Others* [2014] eKLR, the Supreme Court held inter alia, that
 - 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; and
 - f. Whether the application has been brought without undue delay.

12. Similarly, in the case of *Paul Musili Wambua v Attorney General & 2 Others* [2015] eKLR, the Court of Appeal stated as follows:

“...It is now settled by a long line of authorities by this Court that the decision on whether or not to extend the time for filing an appeal the judge exercises unfettered discretion. However, in the exercise of such discretion, the court must act upon reason(s) not based on whim or caprice. In general, the matters which a court takes into account in deciding whether or not to grant an extension of time are; the length of delay, the reason for the delay, the chances of the appeal succeeding if the application is granted and the degree of prejudice to the respondent if the application is granted.”

13. In the matter herein, the Judgment sought to be appealed was rendered on 23rd August, 2024. The application before the court was filed some three (3) months later on 29th November, 2024. Explaining the said delay, the Applicant’s Counsel on record Awino Joshua who swore the Supporting Affidavit to the application states as follows at Paragraphs 4 to 6 thereof:

4. That on the 23rd August, 2024, Judgment was delivered against the Applicant, however the Applicant’s Advocate’s efforts to get copies of the said Judgment bore no fruits until 4th September, 2024 when we received a copy of the Judgment and its draft decree and subsequent a letter from the Respondent’s Advocate dated 4th October, 2024 tabulating the decretal amount as Kshs. 1,382,500/= inclusive of Costs. (Annexed and Marked “FMN -1” is the email from the Respondent of 4th September 2024 attaching a copy of the Judgment and its draft decree and letter of 4th October, 2024, a tabulation of the decretal amount plus costs);
5. That upon receipt of the Judgment, I accordingly advised the Applicant on the same and have been instructed to appeal against the said judgment. Our firm has duly prepared the Draft Memorandum of Appeal, a copy of which is annexed hereto and marked “FMN-2”. The said Draft Memorandum sets out the grounds on which the Appeal is based; and



6. That I am aware of my own knowledge that the Respondent’s Advocate has threatened to commence eviction on the 30th November, 2024 going by its letter dated 23rd October, 2024 addressed to the Applicant’s Advocates. (Annexed and marked “FMN -3” is the Respondent’s letter of 23rd October, 2024 threatening (the) Applicant with eviction).”
14. I was not persuaded from a perusal of the foregoing paragraphs that the three (3) months delay had been sufficiently explained. The Applicant has not explained why the Counsel was unable to obtain a copy of the Judgment after its delivery. There is also no explanation why even after receiving a copy of the Judgment from the Respondent’s Counsel on 4th September, 2024 no Memorandum of Appeal was filed within the 30 days allowed under Section 79G of the *Civil Procedure Act*.
15. In an application for extension of time, where the court is being asked to exercise discretion, there must be some material before the court to enable its discretion to be so exercised. In the matter herein it was clear that the application was only filed on 29th November, 2024 in response to the Respondent’s notice that the Applicant would be evicted from the suit premises on 30th November, 2024.
16. I have also perused the intended Memorandum of Appeal and the Judgment of the trial Court and I was not persuaded that it raised any pertinent issues of law.
17. Accordingly, I am not persuaded that there is any merit in the Motion dated 29th November, 2024. I dismiss the same with costs to the Respondent.

RULING DATED, SIGNED AND DELIVERED IN OPEN COURT AND VIRTUALLY AT MOMBASA THIS 30TH DAY OF APRIL, 2025

.....

J.O. OLOLA

JUDGE

In the presence of:

- a. Ms. Firdaus Court Assistant.
- b. Mr. Noor Advocate for the Applicant
- c. Mr. Omwenga Advocate for the Respondents

