



**Njuguna v Progressive Credit Limited & 6 others (Environment and Land Miscellaneous Application E048 of 2024) [2025] KEELC 3640 (KLR) (28 April 2025) (Ruling)**

Neutral citation: [2025] KEELC 3640 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO  
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E048 OF 2024  
MD MWANGI, J  
APRIL 28, 2025**

**BETWEEN**

**DANIEL KURIA NJUGUNA ..... APPLICANT**

**AND**

**PROGRESSIVE CREDIT LIMITED ..... 1<sup>ST</sup> RESPONDENT**

**CATHERINE WANJIRU KURIA ..... 2<sup>ND</sup> RESPONDENT**

**ALFRED NYAGAKA ONGOTO T/A ONGOTO & COMPANY  
ADVOCATES ..... 3<sup>RD</sup> RESPONDENT**

**JOYCE WANJIKU GITHINJI ..... 4<sup>TH</sup> RESPONDENT**

**COMMERCIAL BANK OF AFRICA LIMITED ..... 5<sup>TH</sup> RESPONDENT**

**LAND REGISTRAR, KAJIADO NORTH DISTRICT ..... 6<sup>TH</sup> RESPONDENT**

**CHIEF LAND REGISTRAR ..... 7<sup>TH</sup> RESPONDENT**

*(In respect of the notice of motion dated 17/9/2024 brought under the provisions of Sections 796 and 95 of the [Civil Procedure Act](#), Order 50 rule 6 and order 41 rule 4 of the Civil Procedure Rules, 2010 seeking inter alia for leave to appeal out of time and a stay of execution of the judgment and consequently decree issued in Ngong Civil Suit No. 192 of 2018 on 11<sup>th</sup> May 2023)*

**RULING**

**Background.**

1. In his notice of motion dated 17/9/2024, the Applicant principally prays for 2 orders; first, that the Honourable Court be pleased to grant stay of execution of the judgment issued in Ngong SPMC Civil Case No. 192 of 2018 pending the hearing and determination of intended appeal. Secondly,



that the Applicant be granted leave to appeal out of time against the whole judgment of Hon. P. Achieng (SPM), delivered on 11<sup>th</sup> May 2023 at Ngong Senior Principal Magistrate's Court and the memorandum of appeal annexed thereto be deemed as duly filed and served. He further prays that the costs of this application be provided for.

2. The notice of motion application is premised on the grounds on the face of it and on the supporting affidavit of Daniel Kuria Njuguna sworn on 18<sup>th</sup> September 2024. The Applicant's main ground is that he was incapacitated by a mental condition and could not therefore have instructed his then advocate on time to file an appeal.
3. The Applicant avers that upon recovery, he instructed the law firm of M/S. Clarence Kariuki & Partners to act for him but who however wrongly filed the application for extension of time in the High Court instead of this court. The application was struck out for want of jurisdiction after a preliminary objection was raised by the 1<sup>st</sup> Respondent.
4. The Applicant pleads that the delay in filing the application was not therefore intentional; it was as a result of circumstances beyond his control. He urges the court not to shut the door of justice but allow him an opportunity to file his appeal out of time. He vouches that the intended appeal is meritorious, raises arguable issues and has high chances of success. He will be exposed to substantial loss if denied the opportunity to lodge his appeal.

#### **Response by the 1<sup>st</sup> Respondent.**

5. The 1<sup>st</sup> Respondent responded to the application by way of a replying affidavit sworn by one Mbaabu Muchiri on 6<sup>th</sup> December 2024. The deponent terms the application herein as a sham and a waste of the court's valuable resources. He opines that it amounts to a gross abuse of the court process since it is entirely based on falsehoods. It is a ploy to derail execution of the decree in favour of the 1<sup>st</sup> Respondent.
6. The deponent asserts that the Applicant has since the delivery of the judgment been actively engaging the 1<sup>st</sup> Respondent in endless litigation and settlement proposals. The particulars are at paragraph five of the supporting affidavit.
7. The deponent further avers that the delay in filing the application is inordinate. The application is an afterthought. No evidence of mental illness has been attached to the affidavit of the Applicant. The reasons advanced for the delay in filing the application too are not satisfactory.
8. The deponent states that allowing the application after such an inordinate delay will occasion great prejudice to the 1<sup>st</sup> Respondent. In any event, the draft memorandum of appeal attached to the application does not raise any arguable grounds of appeal. The Applicant has therefore not established good and sufficient grounds to warrant the grant of leave to file an appeal out of time.
9. Regarding the application for stay pending appeal, the deponent avers that the Applicant is only out to frustrate execution of the decree of the subordinate court and deny the 1<sup>st</sup> Respondent the fruits of its judgment. The Applicant has not demonstrated what substantial loss it is likely to suffer if the order of stay is not granted.

#### **Supplementary affidavit by the Applicant.**

10. The Applicant filed a supplementary affidavit sworn on 21<sup>st</sup> January 2025 pursuant to leave granted by the court. He reiterated that he had suffered mental health challenges since the year 2020 which led to a mental breakdown, hypoglycemia, asthma, hypertension and radiculopathy which cumulatively have had significant impact on his state of mind harboring his participation in the case against him.



11. The Applicant admits that he was indeed committed to civil jail in execution of the decree sought to be appealed against, at the instance of the 1<sup>st</sup> Respondent, but he had to be hastily released on the premises of his medical condition. He attached a medical report dated 12<sup>th</sup> June 2024 from Trinity Care Centre in Ngong Town in support of his assertions.

**Court's directions.**

12. The directions by the court were that the application be canvassed by way of written submissions. The Applicant and the 1<sup>st</sup> Respondent duly complied. The court has had the opportunity to read and consider the submissions in writing this ruling.

**Issues for determination.**

13. The jurisdiction of this court to order a stay of execution pending appeal is invoked by the filing of an appeal; though there is a little window under the provisions of Order 42 rule 6(3) of the Civil Procedure Rules. The sub rule allows the court, without formal application made, to order upon such terms as it may deem fit, a stay of execution pending the hearing of a formal application. This is usually done immediately upon delivery of judgment or ruling and before the intending Applicant has had time to file the appeal or notice of appeal, for that matter, as the case may be, and the formal application for stay of execution.
14. The window of opportunity is not open for the Applicant the herein considering that this application has been made before the court to which the appeal is preferred and off course the lapse of time since the delivery of the judgement by the subordinate court. What is before the court is not an appeal but a miscellaneous application. There is no appeal pending. The Applicant has literally put the cart before the horse. He is not entitled to the order of stay before an appeal is filed. The court will therefore proceed to consider the application for leave to appeal out of time only. The application for stay pending appeal is premature and lacking in legal basis.

**Analysis and determination.**

15. Both sides are in principle in agreement that this court has the jurisdiction to extend time to file an appeal outside the statutory timelines in deserving cases. The Court of Appeal in the case of Paul Musili Wambua –vs- Attorney General & 2 others (2015) eKLR, stated that;

“It is now settled by a long line of authorities by this court that the decision 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 reasons 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 the delay, the reason for the delay, the chances of the appeal succeeding if the application is granted, the degree of prejudice to the Respondent if the application is granted”.

16. The above position on the considerations whether or not to grant leave to appeal was reiterated in the case of Thuita Mwangi –vs- Kenya Airways Limited (2003) eKLR, where the Court of Appeal (differently constituted), held that some of the factors to be considered include;
  - a. The period of delay; The reason for the delay;
  - b. The arguability of the appeal;
  - c. The degree of prejudice which could be suffered by the Respondent if the extension is granted;



- d. The importance of compliance with time limits to the particular litigation or issue and;
- e. The effect if any on the administration of justice or public interest if any is involved.
17. It was the same position advanced in the case of *Muringa Co. Ltd -vs- Archdiocese of Nairobi Registered Trustees* (2020) eKLR.
18. In addition to the above considerations, this court is alive to its obligations under Article 159 (2) (a) (b) (c) and (d) of *the Constitution* and Sections 1A and 1B of the *Civil Procedure Act* as well as Section 3 and 19 of the *Environment and Land Court Act* to foster the overriding objective to facilitate the just, expeditious, proportionate and accessible resolution of disputes.
19. Having carefully considered the application herein and the response by the Respondents, I note that the application before me was filed after over one year and five months after the delivery of the judgment sought to be appealed against. The delay though inordinate has been explained. The reasons advanced for the delay are not only plausible but also supported by material evidence in form of the medical report confirming the conditions the Applicant suffered.
20. In the case of *Markson Karani Muchunku -vs- Joseph Ngari Gituku* (2021) eKLR, cited by the Respondents, the court was of the view that the door of justice should not be closed because of a mistake committed by a lawyer of great experience who ought to have known better. The court reiterated that a mistake is a mistake. This court is of the view that the mistakes of the advocate for the Applicant who filed the application for extension of time in the High Court rather than in this court causing further delay should not be visited on the Applicant.
21. Having looked at the draft memorandum of appeal, I am persuaded it raises arguable issues in the sense of not whether it will probably succeed or not but whether it is an arguable one. The Applicant is therefore deserving of the exercise of this court's discretion to extend time to allow him the opportunity to exercise his undoubted right of appeal.
22. The court therefore grants leave to the Applicant to file and serve his memorandum of appeal in the next 14 days from the date of this ruling. The costs of the application shall be in the cause.

It is so ordered.

**DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 28<sup>TH</sup> DAY OF APRIL 2025.**

**M.D. MWANGI**

**JUDGE**

In the virtual presence of:

Mr. Michael Wanyama for the Applicant

Mr. Muuo for the 1<sup>st</sup> Respondent

N/A by the 2<sup>nd</sup> to 7<sup>th</sup> Respondents

Court Assistant: Mpoye

**M.D. MWANGI**

**JUDGE**

