



REPUBLIC OF KENYA



**KENYA LAW**  
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**Nechesa v Juma & 3 others (Environment & Land Miscellaneous Case  
E027 of 2024) [2025] KEELC 3047 (KLR) (2 April 2025) (Ruling)**

Neutral citation: [2025] KEELC 3047 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA  
ENVIRONMENT & LAND MISCELLANEOUS CASE E027 OF 2024**

**A NYUKURI, J**

**APRIL 2, 2025**

**BETWEEN**

**DINA NECHESA ..... APPLICANT**

**AND**

**RAPHAEL JUMA & 3 OTHERS ..... RESPONDENT**

**RULING**

**Introduction**

1. Before court is a Notice of Motion dated 9<sup>th</sup> December, 2024 filed by the applicant seeking the following orders;
  - a. Spent
  - b. That this honourable court be pleased to extend time within which to file an appeal against the judgment in Butali PM's Land case no. 26 of 2018, *Raphael Juma & 3 Others v Dina Nechesa* which judgment was read and delivered on 3<sup>rd</sup> October, 2024.
  - c. That in the meantime and pending hearing and determination of this application, this honourable court be pleased to issue orders for stay of execution of the judgment in Butali PM's Land Case No. 26 of 2018.
  - d. Costs be provided for.
2. The application was predicated on the supporting affidavit sworn on 9<sup>th</sup> December, 2024 by Dina Nechesa, the applicant. The applicant's case is that judgment in Butali Land Case No. 26 of 2018 was delivered on 3<sup>rd</sup> October, 2024 and that aggrieved with the judgment, she intended to appeal against the same but was unable to raise legal fees in 30 days. According to her, the intended appeal raises substantial issues of law and fact and that she is at risk of being evicted from the suit property.



She further argued that the delay was not inordinate. She attached a copy of the judgment, draft Memorandum of appeal and notice of eviction.

3. The application was opposed. Raphael Juma the 1<sup>st</sup> respondent swore an affidavit dated 3<sup>rd</sup> February, 2025 in response to the application. He deponed that the application was a mere afterthought and lacked merit as the applicant had no intention of appealing but her application was prompted by the eviction notice.
4. He also stated that the applicant wanted to use the application to delay the eviction process as the reason given was casual. According to him, allowing the applicant to rely on the reason that she could not raise legal fees on time would open flood gates for such litigation because many people would plead financial inability to get away with delay. He stated that the applicant's delay was inexcusable and that he was guilty of indolence. He also stated that the intended appeal did not raise substantial issues.
5. Both parties filed written submissions in urging their respective cases. The applicant's submissions are dated 8<sup>th</sup> March, 2025, while the respondent's submissions are dated 3<sup>rd</sup> March, 2025.

### **Applicant's submissions**

6. Counsel for the applicant submitted that the application herein was made two months after delivery of judgment hence the delay was not inordinate. Counsel also argued that the draft Memorandum of appeal demonstrated substantial issues of fact and law to be determined by court.
7. Reliance was placed on Nairobi (Milimani) Civil Appeal No. E037 of 2022 *[Malaha Pawandeep Kaur Dhanjal v Nabid Iqubal Kanji Habib](#)* for the proposition that in determining an application for extension of time, the court considers the length of the delay, the reason for delay and the prejudice to be suffered by the respondent.

### **Respondent's submissions**

8. Counsel for the respondent relied on the case of *[Rupa Savings & Credit Co-operative Society v Violet Shidogo](#)* (2022) eKLR and argued that the applicant had not satisfactorily explained the reason for delay and that failure to raise legal fees in time is not a good reason.
9. On whether the applicant deserves stay of execution, counsel relied on the case of *[Marie Makhoul & Manguerita Desir v Sabina James](#)* and argued that for a court to deny a judgment holder the right to enjoy the fruits of the judgment, good reasons must be advanced. Counsel argued that there was no evidence of substantial loss.

### **Analysis and Determination**

10. The court has carefully considered the application, response and submissions filed. The applicant sought for extension of time to appeal and stay of execution pending determination of the instant application. Therefore, the prayer for stay of execution is spent. The only issue that arise for determination is whether the applicant has met the threshold for grant of orders for extension of time.
11. Section 79G of the *[Civil Procedure](#)* provides for the period within which an appeal may be filed 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 anytime which the lower court may certify as having been requisite for the preparation and delivery to the appellant 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 has good and sufficient cause for not filing the appeal in good time”.

12. Therefore, the period within which a party may appeal against the decision of a subordinate court is 30 days. However, this court has discretion on being satisfied that there is a good and sufficient cause for the delay, to extend time for filing appeal.

13. Order 50 Rule 6 of the [Civil Procedure Rules](#) provides for the power of the court to extent time as follows;

Power to enlarge time [Order 50, rule 6]

Where a limited time has been fixed for doing any act or taking any proceedings under these Rules, or by summary notice or by order of the court, the court shall have power to enlarge such time upon such terms (if any) as the justice of the case may require, and such enlargement may be ordered although the application for the same is not made until after the expiration of the time appointed or allowed:

Provided that the costs of any application to extend such time and of any order made thereon shall be borne by the parties making such application, unless the court orders otherwise.

14. The power of the court to extend time is discretionary and must be exercised judiciously by interrogating the length of the delay and the reasons for the delay, as well as the interests of justice and the prejudice likely to be suffered by the respondent if time is extended.

15. In the case of [Nicholas Kiptoo Arap Korir Salat v Independent Electoral and Boundaries Commission & 7 Others](#) (2014) eKLR, the Supreme Court of Kenya stated the elements to consider in determining an application for extension of time as follows;

1. 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;
2. A party who seeks for extension of time has the burden of laying the basis to the satisfaction of the court.
3. Whether the court should exercise the discretion to extend time, is a consideration to be made on a case to case basis;
4. Whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the court;
5. Whether there will be any prejudice suffered by the respondents if the extension is granted;
6. Whether the application has been brought without undue delay; and
7. Whether in certain cases, like election petitions, public interest should be a consideration for extending time.”

16. In the instant case, the impugned decision was delivered on 3<sup>rd</sup> October, 2024, therefore, the applicant ought to have filed her appeal by 2<sup>nd</sup> November, 2024. The Motion herein was filed on 9<sup>th</sup> December, 2024 which is a delay of one month and one week. The reason given for the delay is that the applicant was unable to immediately raise legal fees for legal representation to mount an appeal.

17. This court takes Judicial notice of the fact that in our jurisdiction, legal services are not cheap and not everyone can afford to raise legal fees for an appeal in a short time, yet preparing a reasonable appeal



would require a degree of legal knowledge, which many lay persons do not possess. The respondent has not presented evidence to disapprove the applicant's assertion that she could not raise legal fees in time. In view of the fact that the delay is about a month and a week, and the reason thereof being inability to raise legal fees in time, this court is satisfied that the applicant's reason for the delay as viewed in the context of the period of the delay, demonstrates a satisfactory explanation for the delay and the delay is not inordinate in the circumstances of this case, hence she deserves extension of time and an opportunity to be heard on appeal.

18. In the premises I am satisfied that the applicant's explanation is satisfactory and she deserves extension of time. However, as the applicant is the one who has sought extension of time and in view of the proviso to the provision of Order 50 Rule 6 of the *Civil Procedure Rules*, it is my view that in the interests of justice, the applicant ought to bear the costs of this application.
19. In the premises I allow the application dated 9<sup>th</sup> December 2024 as follows;
  - a. This court hereby grants the applicant leave to file appeal out of time against the Judgment delivered on 3<sup>rd</sup> October 2024 in Butali MCELC Case No. 26 of 2018.
  - b. The applicant shall file and serve her appeal in 14 days of this ruling.
  - c. The costs of this application are awarded to the respondents and shall be borne by the applicant.
20. It is so ordered

**DATED, SIGNED AND DELIVERED AT KAKAMEGA IN OPEN COURT/VIRTUALLY THIS  
2<sup>ND</sup> DAY OF APRIL, 2025 THROUGH MICROSOFT TEAMS VIDEO CONFERENCING  
PLATFORM**

**A. NYUKURI**

**JUDGE**

In the presence of;

Ms. Arunga for the applicant

No appearance for the respondent

Court Assistant: M. Nguyai

