



Muraga v Mukuba & another ((Suing as the legal representatives of the Estate of Abel Nthamburi Muraga - Deceased)) (Environment and Land Miscellaneous Application E037 of 2024) [2025] KEELC 485 (KLR) (11 February 2025) (Ruling)

Neutral citation: [2025] KEELC 485 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E037 OF 2024
BM EBOSO, J
FEBRUARY 11, 2025

BETWEEN

PETER MAGAJU MURAGA APPLICANT

AND

KAREN MUKUBA & FANCY KINYA RESPONDENT

(SUING AS THE LEGAL REPRESENTATIVES OF THE ESTATE OF ABEL NTHAMBURI MURAGA - DECEASED)

RULING

1. Falling for determination in this ruling is the notice of motion dated 4/9/2024, brought by Peter Magaju Muraga [the applicant]. Through it, the applicant seeks: (i) leave to effect a change of advocates; (ii) an order staying execution of the Judgment and Decree in Nkubu SPMC E&L Case No 57 of 2020, pending the hearing of an intended appeal; and (iii) an order enlarging the time within which to lodge an appeal against the Judgment rendered on 19/10/2023 in Nkubu SPMC E&L Case No 57 of 2020.
2. The application was premised on the grounds set out on the face of the motion and in the applicant's two affidavits dated 4/9/2024 and 14/10/2024 respectively. It was canvassed through written submissions dated 9/12/2024, filed by Gikunda Anampiu & Co Advocates. The case of the applicant is that, his previous advocates did not inform him about the Judgment in the Lower Court. He adds that he got to know about the Judgment on 22/7/2024 when he was personally served with a notice to show cause why he should not be committed to civil jail for failure to pay costs of the suit in the Lower Court. The applicant adds that at that point, he instructed his previous advocates to "file an appeal" and "somehow" they disagreed on "extraneous matters" which he did not wish to disclose to the Court.



3. The applicant further contends that he was not able to get in touch with his previous advocates because he was involved in an accident which made him immobile from 11/9/2023. It is his case that he has a strong appeal and that he should be allowed the opportunity to ventilate the appeal
4. The respondents opposed the application through a replying affidavit dated 23/9/2024, sworn by Fancy Kinya and written submissions dated 29/10/2024, filed by M/s Mwirigi Kaburu & Co Advocates. The case of the respondents is that, having filed the application without filing a memorandum of appeal alongside the application, the application is incurably incompetent. The respondents further contend that the applicant has failed to give a sufficient reason that would warrant the exercise of the Court's jurisdiction in his favour. The respondents point out that the receipts which the applicant exhibited relate to 11/9/2023 and have no bearing on the post Judgment period, adding that no medical evidence of immobility has been tendered to demonstrate the applicant's alleged immobility. The applicant further contends that the applicant's appeal is bereft of merit, adding that the respondents led evidence clearly demonstrating the existence of a trust. The respondents urge the Court to dismiss the application.
5. The Court has considered the application; the response to the application; and the parties' respective submissions. The two key issues that fall for determination in the application are: i) Whether the criteria for enlargement of time has been satisfied; and (ii) Whether the criteria for grant of an order of stay of execution pending disposal of an appeal by this Court has been satisfied. I will analyse and dispose the two issues sequentially in the above order. Before I do that, I will comment on the plea for leave to change advocates and on the contention that the present application is incurably defective because the appeal has not been lodged.
6. Through his supplementary affidavit dated 14/10/2024, the applicant exhibited a consent that was executed by M/s Munene Kirimi & Co Advocate. Through the consent, the said firm acceded to a post-judgment change of advocates in the suit in the Lower Court
7. Secondly, there is no requirement for leave or consent of another law firm in a miscellaneous application of this nature or in an appeal in which judgment has not been rendered. The leave or consent contemplated under Order 9 rule 9 of the Civil Procedure Rules applies to a change of advocates in the cause in which judgment has been entered. An appeal in this Court is a distinct cause instituted by way of a memorandum of appeal. A miscellaneous application such as the one under consideration is, similarly, a distinct cause. The advocate instituting an appeal or a miscellaneous application for enlargement of time does not require leave of the court or consent of another law firm in order to act for a party in the new cause. For this reason, prayer 2 of the application under consideration is superfluous.
8. On the contention that the applicant should have filed an appeal prior to applying for enlargement of time, the prevailing jurisprudence is that a time-enlargement order ought to be obtained prior to lodging the appeal. The application is therefore properly before this Court. I now turn to the substantive issues in the application.
9. Does the application satisfy the criteria for enlargement of time? The relevant criteria was outlined by the Supreme Court of Kenya in the case of Nicholas Kiptoo Arap Salat Vs Independent Electoral and Boundaries Commission 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 a 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.
10. The Judgment giving rise to the present application was rendered on 19/10/2023. The 30 days limitation period lapsed on or about 20/11/2023. The plea for enlargement of time was brought on 9/9/2024. A period of more than 9 months had lapsed from the date when the limitation period ended. The applicant was represented in the Lower Court by an advocate of his choice. His advocate was his agent
11. The applicant contends that his advocate did not inform him about the Judgment until he personally went to their office on 22/7/2024 carrying a notice to show cause which had been served on him. On this, the applicant’s advocate has not sworn any affidavit to explain what transpired. The applicant wants the respondents to be subjected to unending litigation because of the concealed conduct of his agent. Secondly, even after the applicant was served with a notice to show cause in mid July 2024, a further unexplained delay of about 49 days lapsed without the applicant taking any urgent steps to move the court for an enlargement order.
12. That is not all. The applicant contends that there was a disagreement between him and his previous advocate on undisclosed “extraneous matters.” He has withheld the relevant information relating to the alleged disagreement but wants the court to exercise discretion and subject the respondents to unending litigation on the basis of the withheld information.
13. The Court has also considered the contention that the applicant was “immobile for sometime since 11/9/2023”. The applicant did not present any medical evidence of the alleged immobility. He did not present any medical report proving the alleged immobility and indicating the duration of the immobility. The exhibited receipts and X-ray requisition are not conclusive evidence of immobility that made it impossible for the applicant and his advocate to communicate even through the phone.
14. The totality of the foregoing is that, the applicant has failed to satisfactorily explain the delay of over 9 months. There is therefore no proper basis upon which this Court can properly exercise the discretionary jurisdiction to enlarge time after the lapse of 10 months from the date when the impugned Judgment was rendered. Consequently, the Court’s finding on the first issue is that the criteria for enlargement of time has not been met.
15. In the absence of an order enlarging time, and in the absence of an appeal, the plea for an order of stay of execution pending appeal fails.
16. In the end, the Application dated 4/9/2024 is rejected and dismissed for lack of merit

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 11TH DAY OF FEBRUARY, 2025.

B M EBOSO [MR]

JUDGE



In the Presence of
Mr. Kaburu for the Respondent
Mr. Tupet – Court Assistant

