



REPUBLIC OF KENYA



Rural Electrification and Renewable Energy Corporation v Mwangi (Environment and Land Appeal E048 of 2024) [2025] KEELC 3571 (KLR) (5 May 2025) (Ruling)

Neutral citation: [2025] KEELC 3571 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MURANGA
ENVIRONMENT AND LAND APPEAL E048 OF 2024**

MN GICHERU, J

MAY 5, 2025

BETWEEN

**RURAL ELECTRIFICATION AND RENEWABLE ENERGY
CORPORATION APPLICANT**

AND

WATSON MUTAHI MWANGI RESPONDENT

RULING

1. This ruling is on the notice of motion dated 29-11-2024. The motion which is by the Applicant is brought under Article 50 of the *Constitution*, Orders 42 rule 6 and 50 rule 6 of the *Civil Procedure Rules* and Section 79G of the *Civil Procedure Act*.
2. The motion seeks the following residual orders.
 3. Stay of execution and enlargement of time for lodging and appeal against Muranga ELC No. E055 of 2022, *Watson Mutahi Mwangi v. Rural Electrification and Renewable Energy Corporation*, pending the hearing and determination of the appeal against the judgment made on 10-7-2024.
 4. That upon the grant of the above prayer, leave be granted to the Applicants to file an appeal out of time against the judgment dated 10-7-2024.
 5. That the costs of this application be provided for.
3. The motion is based on eleven grounds and is supported by an affidavit sworn by Leah Odhiambo dated 29-11-2023.

In summary, the Applicant urges as follows. One, this court delivered a judgment dated 10-7-2024 which aggrieved the Appellant. Two, the Applicant also seeks the court to enlarge the time for filing the appeal out of time against the judgment of Hon. Susan Mwangi dated 10-7-2024. Three, the



Respondent is likely to execute the decree and render the intended appeal nugatory. Four, the intended appeal has high chances of appeal. Five, if the appeal is not allowed, the Applicant will suffer substantial loss. Six, the annexed draft memorandum of appeal be deemed to be duly filed and properly on record. Seven, the delay in filing the appeal was not intentional but caused by the advocate on record being taken ill and not in a position to file the appeal on time. Finally, the Applicant is ready and willing to comply with all directions that the court may deem fit.

4. The motion is opposed by the Respondent who has sworn a replying affidavit dated 30-1-2025. His counsel has also filed seven (7) grounds of opposition dated 22-1-25. In summary, the Respondent's response is as follows.

One, the deponent of the supporting affidavit who is the advocate for the Applicant has no capacity to swear an affidavit in this case. Secondly, the delay of more than four months from July to November 2024 is inordinate. Thirdly, there is no draft memorandum as alleged and there is no indication which appeal will be rendered nugatory. Fourthly, no good reason is given for failure to file the appeal in time. Fifthly, the decree is a money one and the Applicant has not indicated whether they are ready to comply with the conditions set in Order 42 rule 6 Civil Procedure Rules. Sixthly, the application herein is omnibus in nature and the two prayers cannot be granted in the same motion. Finally, the Applicant has not proved that they stand to suffer substantial loss if the motion is not allowed.

5. Counsel for the parties filed written submissions dated 18-2-2025 and 6-3-2025 respectively. Only the counsel for the Respondent identified issues for determination. The counsel for the Applicant did not but she nevertheless submitted substantially on the right to a fair hearing, extension of time and an award of special damages.

The issues identified by the Counsel for the Respondent are as follows.

- a. Whether the court should grant an extension of time to appeal to the Appellant.
 - b. Whether the Applicant has fulfilled the requirements under Order 42 rule 6 for grant of stay of execution.
6. I have carefully considered the motion in its entirety including the grounds, the affidavits in support and reply, the submissions and the law cited therein.

Even though the delay was four (4) months, the fact that counsel says that she was unwell persuades me to allow the application to file the appeal out of time. There is no draft memorandum as stated by counsel for the Applicant, so she has to file the appeal within 14 days from the date hereof.

7. On the second issue of stay of execution of the judgment dated 10-7-24 I find the motion has no merit for the following reasons.

Firstly, although I have not seen the judgment dated 10-7-2024, the decree is said to be a money one. General damages of Kshs. 1 Million and special damages of Kshs. 2.25 million were awarded to the Respondent. There is no evidence that the Respondent will not be able to refund this sum in the event that the intended appeal is successful. I believe that the Respondent was awarded this sum because his land was trespassed upon by the Applicant. Being a landowner, he is capable of refunding the decretal sum. If he does not, he has property and can be sold in execution of the decree. Secondly, there is delay in bringing the application for stay of execution. Though the delay has been excused in the other application for filing the appeal out of time, the parameters are not the same. Thirdly, even though the Applicant states that they are willing to deposit any security for the due performance of the decree as the court may order, this will not help because the court has already found that two of the three mandatory conditions for stay of execution have not been fulfilled. Yet under Order 42 rule 6 Civil



Procedure Rules, all the three conditions must exist together and the absence of one means that stay of execution cannot be allowed.

8. In conclusion and for the reasons already given the following orders will issue.
 1. Applicant allowed 14 days within which to file the intended appeal.
 2. Application for stay of execution of the decree in Murang'a CMCL ELC Case No. E055/2024 is dismissed.
 3. Costs to the Respondent.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT MURANG'A THIS 5TH DAY OF MAY, 2025.

M.N. GICHERU

JUDGE.

Delivered online in the presence of; -

Court Assistant – Mwangi Njonjo

Applicant's counsel – Miss Odhiambo

Respondent's Counsel – Miss Waitere

