



**Kirusua & another v Kapiro (Environment and Land Appeal
E030 of 2024) [2025] KEELC 4270 (KLR) (5 June 2025) (Ruling)**

Neutral citation: [2025] KEELC 4270 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KILGORIS
ENVIRONMENT AND LAND APPEAL E030 OF 2024**

MN MWANYALE, J

JUNE 5, 2025

BETWEEN

SAMWEL NGORORI KIRUSUA 1ST APPELLANT

NICHOLAS TAJEUO KIRUSUA 2ND APPELLANT

AND

JOHN OLAKUYIA OLE KAPIO RESPONDENT

RULING

1. The application dated 11.10.2024 subject of this Ruling seeks stay of execution of the Judgment and consequential orders delivered on 18.03.2024 by Hon. M.I.G Moranga Chief Magistrate, as well as stay of proceeding in Kilgoris CME & L No. 16/2018.
2. The grounds in support of the Application are that the Appellants/Applicants have lodged an Appeal against the Judgment of the trial court, which appeal has an overwhelming chance of success yet the Respondent had commenced execution proceedings.
3. The Application is supported by the supporting affidavit of the Applicant who depones and reiterates the grounds in support of the application.
4. The Application is opposed by the Respondents who have filed grounds of opposition raising grounds inter alia,
 - i. That the application is founded and/or premised on an incompetent Appeal filed out of time without leave of the court.
 - ii. That the application does not meet and/or measure up to the threshold set by provisions, Order 42 Rule 6.



5. The Applicants herein are acting in person while Respondent is represented by the Firm of Oguttu Mboya and Ochwal partners Advocate; and were directed to file submissions in respect to the Application.
6. The court has considered both sets of submissions and frames the following as issues for determination:
 - i. Whether or not there is a competent Appeal before court.
 - ii. Whether or not the application is merited.
 - iii. What orders ought to issue.
 - iv. Who bears the costs of the application.

Analysis and Determination

7. On issue number 1, the Memorandum of Appeal appearing in the record of Appeal is dated 9th October 2024, the Record of Appeal is equally dated 09.10.2024. The impugned Judgment was delivered on 18.03.2024. Whereas the Applicant alludes to have filed a Notice of Appeal in April 2024, the said Notice of Appeal was not exhibited, but being an Appeal from a subordinate court to the ELC the same ought to have been commenced by a Memorandum of Appeal.
8. It is clear that the 30 days within which to file an Appeal lapsed on or about 17.04.2024, and the Memorandum of Appeal having been dated and filed simultaneously with the Record on Appeal in October 2024, was filed out of time.
9. There was no leave sought and granted for the Appeal to be filed out time, hence there is no competent Appeal before court for the court to consider the stay of execution application.
10. On issue number 1, the court finds that there is no competent Appeal before court.
11. On issue Number 2, the application for stay having no legal basis to stand on, in view of the incompetent Appeal, therefore is a nonstarter and the same lacks merit.
12. Noting that the Judgment was delivered more than 1 year ago and execution/eviction has not commenced the Respondent shall cause a Notice of eviction to be issued in accordance with Section 152E of Lands Act before commencing any execution and/or eviction process.
13. The upshot is that the application dated 11.10.2024 is hereby dismissed while the Memorandum of Appeal dated 09.10.2024 is struck out.
14. Costs of the Appeal and in the trial court are awarded to the Respondents.

DATED AT KILGORIS THIS 5TH DAY OF JUNE, 2025.

HON. M.N MWANYALE

JUDGE

In the presence of

CA – Emmanuel/Sylvia/Sandra

Mr. Onyango for the Respondent

Nicholas Tejeuo 1st Appellant/Applicant acting in person

