



REPUBLIC OF KENYA



**KENYA LAW**  
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**Nakachi v Mbugwa (Environment and Land Miscellaneous Case  
E016 of 2024) [2025] KEELC 5108 (KLR) (2 July 2025) (Ruling)**

Neutral citation: [2025] KEELC 5108 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA  
ENVIRONMENT AND LAND MISCELLANEOUS CASE E016 OF 2024**

**A NYUKURI, J**

**JULY 2, 2025**

**BETWEEN**

**PETER NAKACHI ..... APPLICANT**

**AND**

**SIRAH MAGALE MBUGWA ..... RESPONDENT**

**RULING**

**Introduction**

1. Before court is a Notice of Motion dated 5<sup>th</sup> August 2024 filed by the applicant seeking the following orders;
  - a. Spent
  - b. That leave be granted to the firm of Mukavale Kevin & co. Advocates to come on record and represent the appellant/applicant instead of the firm of Ms. Shitsama & Co. Advocates.
  - c. That the notice of change of advocates, and the application herein all filed herewith by the firm of Mukavale Kevin & Co. Advocates for the applicant/appellant be deemed as being properly on record.
  - d. That this honourable court be pleased to grant the appellant leave to file appeal out of time against the judgment delivered by Hon. A. Odawo PM in Kakamega ELC 887 of 2018.
  - e. That an order of stay of execution be issued to stay or stop the execution of the orders, decree and or other consequential orders arising from the judgment of Hon. Odawo PM delivered on 6.3.2024 in Kakamega ELC 887 of 2018 pending the inter partes hearing and determination of the application herein.



- f. That an order of stay of execution be issued to stay or stop the execution of the order, decree and or all other consequential arising from the judgement of Hon.Odawo, PM delivered on 6.3.2024 in Kakamega ELC no. 887 of 2018 pending the hearing.
- g. That the costs of the application herein be in the cause.
2. The application is predicated on the supporting affidavit sworn by Peter Nakachi the applicant on 5<sup>th</sup> August 2024. The applicant's case is that judgment of the trial was delivered on 6<sup>th</sup> March 2024 in Kakamega MC ELC Case No. 887 of 2018 and that time for filing appeal has lapsed. That he seeks leave to file appeal out of time and to change advocates after judgement. That he is still in exclusive use and occupation of the suit property. That the applicants counsel then on record failed to follow up on the proceedings, that he was never heard on merit and that he was never actively involved in the proceedings or notified. That he has realized that eviction orders were issued against him.
3. The application was opposed. Sirah Majale Imbugwa filed replying affidavit dated 14<sup>th</sup> October 2024. He stated that the application lacks merit and is calculated at denying him the fruits of his successful litigation. That he filed suit before the trial court in 2018 and that it was concluded on 6<sup>th</sup> March 2024. He stated that it was not true that the applicant was represented by different firms at the trial as he was represented by the firm of Shivega & Co. Advocates where the current advocate was an associate and took over the matter when Mr. Shivega joined the bench. That the judgement shows that the applicant was stood down on 8<sup>th</sup> February 2022 during examination in chief and deliberately failed to come to court on 15<sup>th</sup> November 2023 when the court had directed that there will be no further adjournment and that he was to blame.
4. The respondent argued that the applicant had a duty to follow up on the matter and cannot be heard to blame his advocate. He stated that the applicant had not shown why he did not follow up on his case between 15<sup>th</sup> November 2023 until 5<sup>th</sup> August 2024. That this delay was inordinate and an afterthought and it is a waste of the court's precious time. That the draft memorandum of appeal does not raise triable issues. That he is the one suffering irreparable loss as he cannot use his land.
5. The application was canvassed by way of written submissions. On record are undated submissions filed by the applicant. No submissions were filed by the respondent.

### **Applicant's submissions**

6. Counsel for the applicant submitted that this court has discretion to extend time and relied on the cases of *Nicholas Kiptoo Arap Korir Salat v Independent Electoral and Boundaries Commission & 7 Others* (2014) eKLR, and *Henry Mukora Mwangi v Charles Gichuna Mwangi* Civil Application No. 26 of 2004 arguing that the applicant had met the threshold for extension of time. Counsel argued that this being a land matter, it has serious consequences to the litigants and that the applicant who is in exclusive occupation shall be irreparably affected.
7. The applicant argued that no prejudice shall be suffered by the respondent if time is extended. Further that the applicant had satisfactorily explained the delay. On the prayer for stay of execution reliance was placed on the case of *Butt v Rent Restriction Tribunal* (1982) KLR417 counsel maintained that if stay is not granted the applicant will be rendered homeless.

### **Analysis and determination**

8. The court has carefully considered the application, response and submissions. The issue that arise for the court's determination is whether the applicant deserves the orders sought.



9. Section 79G of the *Civil Procedure Act* provides that appeals from the subordinate court to this court shall be filed in 30 days but the court may admit an appeal out of time where good and sufficient cause is shown.
10. The court has jurisdiction to extend time. Extension of time is not the right of a party but the court ought to consider the length of the delay, the reason for the delay and the interests of justice. An applicant for extension of time must explain to the court's satisfaction the reasons for the delay.
11. 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 principles that govern the court's discretion in 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."
12. In the instant case, the judgment before the trial court was delivered on 6<sup>th</sup> March 2024, while the instant application was filed on 5<sup>th</sup> August 2024 which is five months later. The only reason given by the applicant is that his advocate did not follow up on the proceedings.
13. Having considered the judgment by the trial court, it appears that the applicant was last in court on 8<sup>th</sup> February 2022, when he was stood down during examination in chief and when the matter was scheduled on 15<sup>th</sup> November 2023, the applicant did not show up. The applicant blames his advocate for the delay, yet the case belongs to him and has not told this court what he did between 8<sup>th</sup> February 2022 up until 6<sup>th</sup> March 2024. Following up on the case and proceedings was entirely his business and he cannot be heard to blame his advocate. For these reasons I am not satisfied with the explanation given by the applicant in view of the inordinate period of five months. In the premises, it is my view that the applicant does not deserve orders of extension of time.
14. Regarding leave for change of advocates, Order 9 Rule 9 of the *Civil Procedure Rules* provides that in a matter where judgement has been delivered and a party therein wishes to change their advocate or to act in person having earlier been represented by an advocate, such party must first obtain leave of court.
15. In these proceedings, no judgement has been delivered. These proceedings are not a continuation of Kakamega ELC No. 887 of 2018. Therefore, the prayer for leave for the firm of Mukavale Kevin & Co. Advocates to come on record in the place of Shitsama & Co. Advocate is superfluous, and Provisions of Order 9 Rule 9 of the *Civil Procedure Rules* do not apply in this case.



16. Regarding the prayer for stay of execution, the plaintiff asked for stay pending the hearing of undisclosed proceedings. Since leave to file an appeal has been denied, the prayer for stay of execution is overtaken.
17. In the premises, the court finds no merit in the application dated 5<sup>th</sup> August 2024 and the same is hereby dismissed with costs to the respondent.
18. It is so ordered.

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

**A. NYUKURI**

**JUDGE**

In the presence of;

Mr. Mukavale K. for the applicant

No appearance for the respondent

Court Assistant: M. Nguyai

