



REPUBLIC OF KENYA



Trustees of the African Independent Pentecostal Church of Africa (AIPCA) v Chege (Environment and Land Appeal E037 of 2024) [2025] KEELC 5251 (KLR) (14 July 2025) (Ruling)

Neutral citation: [2025] KEELC 5251 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT AND LAND APPEAL E037 OF 2024**

JM ONYANGO, J

JULY 14, 2025

BETWEEN

TRUSTEES OF THE AFRICAN INDEPENDENT PENTECOSTAL CHURCH OF AFRICA (AIPCA) APPELLANT

AND

MONICA MUMBI CHEGE RESPONDENT

RULING

1. The Appellant moved the court through a Notice of Motion dated 28th March 2024, amended on 28th May 2024, seeking leave to appeal out of time against the judgment in Thika CMCC No. 158 of 2018 delivered on 31st January 2023. The Appellant also sought a temporary stay of execution of the judgment pending the hearing and determination of the intended appeal, and that an order be issued against the Respondent prohibiting her from executing the said judgment.
2. The application is anchored on the grounds set out on the face of the Notice of Motion and the Appellant's Amended Supporting Affidavit sworn by Eliud Njua Njue (a Trustee of the Appellant) on 28th May 2024. In the said Affidavit, the trustee depones that the Respondent initiated the suit against Appellant through a plaint dated 17th September 2018, claiming that they had trespassed on her property known as land parcel number Ruiru/Kiu Block 2/4890. He states that together with the Plaintiff, the Respondent filed a Notice of Motion application of even date seeking injunctive orders against them. It is his position that they responded to the application vide a Replying Affidavit dated 13th November 2018. He adds that on 22nd August 2018, the trial court issued an interim restraining order against the Appellant pending hearing and determination of the application dated 17th September 2018. He contends that in the course of proceedings, the trial court dismissed the suit on 27th October 2021 on account of non-attendance by the Respondent. However, the said suit was later reinstated.



3. He depones that the suit was later fixed for hearing; however, the Appellant did not participate in the said proceedings because their advocate was not aware of the hearing date. He further depones that, consequently, judgment was entered against the Appellant on the 31st January 2023. He adds that they became aware of the existence of the judgment when a firm of Auctioneers visited the Appellant's offices to inform them that they should vacate the suit premises. He states that they immediately contacted their advocates, who confirmed the existence of the judgment. He further states that they discovered that the Respondent had served the judgment on their branch office in Ruiru as opposed to their headquarters, which dealt with the suit.
4. He contends that they are aggrieved by the judgment and they intend to appeal the same. He urges this court to admit the appeal out of time, given that they have a viable appeal as demonstrated by the draft Memorandum of Appeal annexed to the application.
5. The Respondent opposes the application through her Replying Affidavit sworn on 12th November 2024. She depones that the application herein has been brought inordinately late and has not been sufficiently justified. She further depones that this application does not meet the threshold for a grant of stay of execution. She adds that the trial court was satisfied by the service of the relevant notices on the parties before proceeding to hear the matter and deliver the judgment.
6. The Respondent contends that the Appellant has expressly admitted service of the judgment, even though their trustee states that the service was effected at their Ruiru branch office rather than at their headquarters. He further contends that the employees in the office where service was effected did not redirect the service, hence the Appellant cannot claim that the Respondent served the wrong office. She adds that her advocates served the office nearest to the jurisdiction of the court hearing the matter.
7. She faults the Respondent for being evasive and for failing to make material disclosures about the date of the service. She depones that the Appellant was awoken from their deep slumber by her attempt to execute the judgment and assert her right over the suit property.
8. She further faults the Appellant for filing this application nearly a year and a half after the judgment was rendered without articulating any cogent reason for their delay. It is her position that the intended appeal is not viable and has no chance at all of success. She urges this court to dismiss the Appellant's application and condemn them to pay costs of the same.
9. The application was canvassed by way of written submissions. The Appellant had not filed written submissions at the time of writing this ruling. The Respondent filed written submissions dated 12th March 2025 through M/s Kabaki & Company Advocates.

Issues for Determination

10. Having considered the application, the affidavits filed by both parties and the submissions filed by both parties, I find that the main issues for determination are:
 - i. Whether the Appellant should be granted leave to appeal out of time.
 - ii. Whether execution should be stayed pending appeal.

Analysis and Determination.

11. Section 79G of the *Civil Procedure Act* provides that:

“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



any time 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 had good and sufficient cause for not filing the appeal in time.”

12. It is clear that the court has a wide discretion to extend time within which to file an appeal although the discretion must be exercised judiciously. In the case of the County Executive of Kisumu v County Government of Kisumu and 8 Others [2017] eKLR the Supreme Court of Kenya held as follows:

“(23) It is trite law that in an application for extension of time, the whole period of delay should be declared and explained satisfactorily to the Court. Further, this Court has settled the principles that are to guide it in the exercise of its discretion to extend time in the Nicolas Salat case to which all the parties herein have relied upon. The Court delineated the following as the under-lying principles that a Court should consider in exercise of such discretion:

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;

- a. A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the court;
- b. Whether the court should exercise the discretion to extend time, is a consideration to be made on a case to case basis;
- c. Whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the Court;
- d. Whether there will be any prejudice suffered by the respondents if the extension is granted;
- e. Whether the application has been brought without undue delay; and

Whether in certain cases, like election petitions, public interest should be a consideration for extending time.”

13. In the instant case, the Appellant intends to appeal against the judgment of the trial court delivered on 31st January 2023. The Appellant’s trustee has explained that he became aware that the said judgment had been delivered when a firm of Auctioneers visited the Appellant’s offices to inform them that they should vacate the suit premises. He adds that they immediately contacted their advocates, who confirmed the existence of the judgment. The Appellant’s trustee attributes the delay in filing the appeal to the fact that their advocates were not aware of the hearing date or the judgment date and that the Respondent served the Judgment on one of their branch offices as opposed to their headquarters.
14. In response, the Respondent has contended that the trial court was satisfied that service of the hearing and judgment notices had been effected upon the Appellant before proceeding to hear the matter and deliver the judgment. On the issue of service of the judgment, the Respondent has stated that the



Appellant's office in Ruiru, where service was effected, did not redirect service to the headquarters; rather, they accepted the service.

15. The court in the case of County Executive of Kisumu v County Government of Kisumu and 8 Others (supra) stated that in an application for extension of time, the whole period of delay should be declared and explained satisfactorily to the Court. I agree with the Respondent that the Appellant has been vague about the date when it learned about the Judgment. It is also not clear why their advocates were not aware of the hearing and judgment date. The Appellant has not denied service of the said notices upon their advocates. This application was filed over fifteen (15) months from the date of the delivery of the impugned judgment. I find that fifteen (15) months amounts to inordinate delay which has not been explained to the satisfaction of the court. Furthermore, the Appellant has also admitted that service of the said judgment was effected on their Ruiru office. This court further finds that the Appellant has not met the threshold in the Nicolas Salat case to warrant the exercise of its discretion to extend time to file an appeal, in their favour.
16. Having declined the Appellant's plea for enlargement of time within which to file the appeal, there is no basis to grant it a stay of execution of the judgment. The upshot is that the application dated 18th May 2024 lacks merit. It is hereby dismissed with costs to the Respondent.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 14TH DAY OF JULY 2025.

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J. M ONYANGO

JUDGE

In the presence of:

1. Mr Victor Kamau for the Respondent
2. No appearance for the Applicant

Court Assistant: Hinga

