



**Laikera v Kalula (Environment & Land Case E015 of 2022)  
[2023] KEELC 20561 (KLR) (11 October 2023) (Ruling)**

Neutral citation: [2023] KEELC 20561 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MERU  
ENVIRONMENT & LAND CASE E015 OF 2022  
CK YANO, J  
OCTOBER 11, 2023**

**BETWEEN**

**STEPHEN MUTUNGA LAIKERA ..... PLAINTIFF**

**AND**

**RAPHAEL MUTHEE KALULA ..... DEFENDANT**

**RULING**

1. By the notice of motion dated July 18, 2023 and filed in court on July 20, 2023, brought under order 50 rule 6 of the *Civil Procedure Rules*, the applicant seeks enlargement of time to deposit the security amount ordered by the court on October 5, 2022 and for the reduction of the security amount from Kshs.100,000/= to Kshs. 30,000/=.
2. The application is based on the grounds that the applicant was not informed by his counsel on record of the conditions set for retrial(sic), that the applicant was not in a position to deposit Kshs. 100,000/= within the stipulated period as directed by the court and that there is an ongoing suit No. 150 of 2013 which involves the suit land.
3. The application is supported by the affidavit of Stephen Mutunga Laikera, the applicant in which he reiterates the above grounds and states that he is a peasant farmer and will not be able to raise the security of Kshs. 100,000/= as ordered by the court.
4. The application is opposed by the replying affidavit of Raphael Muthee Kalula, the respondent sworn on September 12, 2023 in which he stated that the application has not been brought in good faith, but aimed at denying the respondent the enjoyment of the fruits of judgment. The respondent pointed out that in the judgment dated September 7, 2021, the learned trial magistrate stated that there was no contention that the respondent was the registered owner of the suit land, parcel No. Meru North Athinga/Athanja/7960 and directed for survey to be carried out which was done and filed in court and which showed that the said land and parcel No. Athinga/Athanja/6262 do not border each other.



Copies of the said judgment and the surveyor's report dated January 14, 2021 have been exhibited. The respondent denied knowledge of the judgment and ruling dated March 3, 2022 referred to by the applicant.

5. The respondent pointed out that the applicant was granted a conditional stay and ordered to deposit Kshs. 100,000/= within 21 days in default the conditional stay would automatically lapse. That the application seeking reduction of the said amount is an afterthought and has been made belatedly after a period of eleven (11) months, adding that the applicant has not filed the appeal one year down the line, even after he was granted a further 7 days to do so. The respondent states that he is not a party to Civil Suit No. 150 of 2013. The respondent prayed for the dismissal of the application and appeal No. 57 of 2022 with costs.
6. The court has carefully considered the application. By an application dated May 20, 2022, the applicant herein moved this court seeking leave to file appeal out of time against the ruling of Hon. Wechuli, SRM in Tigania ELC No. 79 of 2019 dated March 3, 2022. By a ruling dated October 5, 2022 the court granted leave to the applicant to file appeal out of time and the same was to be filed and served within 7 days from the date of ruling. The court further granted stay of execution of the ruling of the subordinate court on condition that the applicant deposits a sum of kshs. 100,000/= as security within 21 days from the date of the said ruling, failure to which the conditional stay would automatically lapse. The applicant has now brought the present application seeking for enlargement of time for the applicant to deposit the said security which he also wants reduced to Kshs. 30,000/=. The issue for determination is whether the applicant has made a reasonable case to warrant the grant of the orders sought.
7. The reasons given by the applicant are that he was not informed by his advocate of the conditions set for retrial (sic) and that he will not be able to raise the security of Kshs. 100,000/= ordered by the court because he is a peasant farmer.
8. To begin with, I must point out that this court did not make any order for retrial as alleged by the applicant. The subject of the ruling dated October 5, 2022 was the applicant's own application for leave to file appeal out of time and stay of execution pending the intended appeal. The affidavit in support of the said application was sworn by the applicant himself and therefore was aware of the orders he was seeking from the court. Having approached the court for the said discretionary orders, the applicant, in my view, ought to have been keen to follow up the matter to ascertain whether or not the court exercised its discretion in his favour. The applicant cannot therefore be heard coming to court after over nine months pleading ignorance of the ruling that was delivered by the court pursuant to his own application.
9. The other question that calls for determination is whether the applicant has given sufficient reasons for the court to exercise its discretion and grant the orders sought in the instant application. In the case of *Nicholas Kiptoo Arap Korir Salat Vs IEBC & 7 others* [2014] eKLR, the Supreme Court stated as follows;

“The underlying principles a court should consider in the exercise of such discretion include;

- a) Extension of time is not a right of any party. It is an equitable remedy that is only available to a deserving party at the discretion of the court.
- b) A party who seeks extension of time has the burden of laying a basis for the same to the satisfaction of the court.



- c) Whether the court should exercise the discretion to extend time is a consideration to be made on a case to case basis.
  - d) Whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the court,
  - e) Whether there will be any prejudice suffered by the respondent if the extension is granted,
  - f) Whether the application has been brought without undue delay”
10. The court has wide and unfettered discretion in granting the orders sought. However, in exercising its discretion, the court must consider the length of the delay, the reason for the delay and whether the applicant has offered sufficient reason for reviewing the security granted. It is only then that other consideration such as absence of any prejudice to the respondent may be considered.
11. The applicant is basically seeking to review the orders made by the court on October 5, 2022. This application was filed on July 20, 2023 which as the court has noted is after a period of over nine months. The only reason given by the applicant is that he was not informed of the ruling by his advocate. However, I find this explanation unsatisfactory. For example, the applicant has not explained at what time and how he came to know about the said ruling. Moreover, and as already stated, it was the applicant who brought the earlier application beseeching the court to exercise its discretion and grant leave to file appeal out of time and for stay, which were granted, though conditionally. I therefore find that the delay is not only inordinate and inexcusable, but the same is also not satisfactory. It is my view that the reasons given are not plausible. I also wish to add that other than merely stating that he is a peasant farmer, the applicant has not made any attempt to show the court his financial status for consideration. Moreover, these are issues that ought to have been raised in the earlier application considering that it is trite law that offering security is a prerequisite in an application for stay pending appeal. The court having previously exercised its discretion in favour of the applicant, no doubt the respondent herein will be greatly prejudiced if this application is allowed.
12. In the result, I find that the notice of motion dated July 18, 2023 is without merit and the same is dismissed with costs to the respondent.
13. Orders accordingly.

**DATED, SIGNED AND DELIVERED AT MERU THIS 11<sup>TH</sup> DAY OF OCTOBER, 2023.**

**C.K YANO**

**JUDGE**

