



**Rural Assets Credit Ltd & another v Mutiso (Miscellaneous Civil Application E861 of 2024) [2025] KEHC 10421 (KLR) (Civ) (17 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 10421 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
CIVIL  
MISCELLANEOUS CIVIL APPLICATION E861 OF 2024**

**JN MULWA, J  
JULY 17, 2025**

**BETWEEN**

**RURAL ASSETS CREDIT LTD ..... 1<sup>ST</sup> APPLICANT**

**RICHARD GATHECHA NJOBA ..... 2<sup>ND</sup> APPLICANT**

**AND**

**ERIC MUTUNGI MUTISO ..... RESPONDENT**

**RULING**

1. For determination are two (2) motions one dated 18/09/2024 filed by Rural Assets Credit Ltd and Richard Gathecha Njoba (hereafter the 1<sup>st</sup> and 2<sup>nd</sup> Applicant/Applicants) and the one dated 09/12/2024 filed by Eric Mutungi Mutiso (hereafter the Respondent).
2. The Applicants motion dated 18/09/2024 is premised on Section 3, 3A, 63 & 95 of the [Civil Procedure Act](#) (CPA), Order 42 Rule 6 and Order 50 Rule 6 of the [Civil Procedure Rules](#) (CPR) seeking inter alia:
  - a. Spent.
  - b. That the time for lodging an appeal against the ruling in Nairobi Milimani CMCC No. 3665 of 2017 (hereafter lower Court Suit) delivered on 06/08/2024 be extended to such period as the Honorable Court may deem fit.
  - c. Spent.
  - d. That cost of this application be provided for.
3. The motion is premised on grounds found at the supporting affidavit sworn by Richard Gathecha Njoba of even date. The gist of his deposition is that a ruling in the lower Court suit was delivered on 06/08/2024 however at the time of delivery the Court only read the final orders meanwhile promised



- to furnish a copy of typed proceedings at a later date. That the said ruling was availed on 10/09/2024 and upon perusing the same he instructed counsel to appeal as against the whole ruling having been aggrieved by the same. He goes on to state that as at when he received a copy of the ruling, the time within which to appeal had lapsed thus necessitating the instant motion. He concludes by stating that the intended appeal has a high chance of success therefore the Applicants motion ought to be allowed as prayed.
4. Eric Mutungi Mutiso opposes the motion by way of a replying affidavit dated 27/11/2024 positing that the motion is frivolous, misconceived, baseless, an afterthought and an abuse of the Court process. That the impugned ruling that is sought to be appealed was pursuant to Order 22 Rule 35, Order 45 & Order 51 of the CPR, Orders wherein the Applicants do not have automatic right of appeal and ought to have sought leave first therefore the instant motion ought to be dismissed.
  5. He further states that as at when the impugned ruling was delivered the Applicants counsel was absent from Court however the learned Magistrate informed his counsel that the ruling was typed and thereafter posted on the Case Tracking System (CTS) on the same day it was delivered.
  6. Additionally, the Applicants request for proceedings and a copy of the ruling was done a week later, which demonstrates indolence on their part. He assails the intended appeal as lacking any chance of success and that should Applicants motion be allowed the same would only occasion him prejudice having waited for four (4) years for the settlement of the decretal sum urging the court to dismiss the motion with costs.
  7. In rejoinder by way of a further affidavit dated 03/03/2025, Richard Gathecha Njoba, contends that the premise of the impugned ruling and the resultant order is appealable as of right and does not necessitate leave. That the request for proceedings was made within the prescribed period within which to appeal. He concludes by iterating that the intended appeal has a very high chance of success therefore the Applicants motion ought to be allowed.
  8. On his part, the Respondent's motion dated 09/12/2024 is brought pursuant to Section 1A, 1B & 3A of the CPA, Order 40 Rule 7 and Order 50 Rule 1 of the CPR, seeking inter alia:
    - a. Spent
    - b. That this Honorable Court be pleased to discharge, vary or set aside the interim orders of stay of execution issued by this Court on 04/11/2024.
    - c. Spent.
    - d. That costs of the application be provided for.
  9. The motion is premised on grounds found in Respondent's lengthy replying affidavit of even date. He states that on 04/11/2024 when the Applicants motion came up for hearing inter partes this Court informed parties that the Applicants uploaded motion was illegible as such it was not in a position to peruse the same towards issuance of further orders however the Court went ahead to grant interim orders of stay of execution on grounds that it would be in the interest of justice.
  10. He further states that the premise of this Court granting interim stay orders was that he had failed to file a replying affidavit or submissions to the Applicants motion however the above failure does not obviate the Applicants obligation to demonstrate that an order of stay of execution is deserved. He asserts that the Court ought to have been guided by the fact that it had not perused the Applicants motion to consider its merits and therefore ought to have declined to issue stay of execution orders.



11. He maintains that the Court having granted stay without requiring the Applicants to furnish security was unlawful but also a demonstration of lack of equity of fairness. In summation, he urged the Court to allow the motion in the interest of justice.
12. The Applicants oppose the Respondent's motion by way of a replying affidavit deposed by Richard Gathecha Njoba dated 03/03/2025. On his part he assails the Respondent's motion as being incompetent and an abuse of the Court process given that interim orders were justified on accord of the Respondent's failure to file his response to the Applicants motion despite having been served. As such the Court properly exercised its discretion. That if the Respondent was aggrieved by the Court's exercise of discretion the only remedy was an appeal. He concludes by stating that it is evident that the Respondent's motion lacks legal and factual basis.
13. In rejoinder by way of a further affidavit deposed by Eric Mutungi Mutiso dated 10/03/2025, he reiterates that this Court ought not to have granted the Applicants interim orders for stay of execution on 04/11/2024 whereas the conditions for granting stay had not been met. He further assailed the Applicants argument that the only remedy to the Court's orders of 04/11/2024 is by way of an appeal and that review is equally an available option. He surmised by urging the Court to allow his motion.
14. Directions were taken on disposal of the both motions by way of written submissions. The parties duly complied. That said, this Court has duly the material canvassed in respect of the two (2) motions and postulates that the issues for determination concern:-
  - a. Whether the time for lodging an appeal against the ruling of the lower Court Suit delivered on 06/08/2024 ought to be extended/enlarged?
  - b. Whether the Court ought to discharge, vary or set aside the interim orders of stay of execution issued on 04/11/2024?
  - c. Who ought to bear the costs of the motion?
15. It can be gathered from the rival affidavit material that a lot of weight has been placed on the question of leave to appeal against the impugned ruling. It must be stated that what the Applicants have presented for consideration concerns whether time ought to be enlarged or extended for purposes of lodging an appeal out of time. Therefore, at this juncture the Court will not concern itself with the intended appeal and or its competency as such question as to competency of an appeal is a preserve for the appellate Court, hence it cannot be canvassed at this interlocutory stage. To proceed and address the competency of an intended appeal would be to usurp the appellate Court's jurisdiction. As a consequence, this Court will refrain from addressing the said contestation for the forestated reservation.
16. Alongside the issue of enlargement and or extension of time, the Respondent has strenuously challenged the orders issued on 04/11/2024 by this Court. I reasonably believe that the outcome of the motion that challenges the court orders were fundamentally anchored on the Applicants motion. Consequently, the Court will in the first instance proceed to address the application as filed by the Applicants.

**Whether the time for lodging an appeal against the ruling of the lower Court Suit delivered on 06/08/2024 ought to be extended/enlarged?**

17. The power of the Court to enlarge the time for filing an appeal out of time is expressly donated by Section 79G of the [CPA](#), as well as generally, by Section 95 of the [Act](#). That said, it is trite that for leave to be granted, an applicant is obligated to sufficiently explain to the satisfaction of the Court the cause



of the delay. In *Thuira Mwangi v Kenya Airways* [2003] eKLR the Court reiterated the rendition in *Mutiso v Mwangi* [1997] KLR 630 as follows-;

“It is now well settled that the decision whether or not to extend the time for appealing is essentially discretionary. It is also well settled that generally the matters which this court takes into account in deciding whether to grant an extension of time are; first, the length of delay; secondly, the reason for the delay; thirdly (possibly) the chances of appeal succeeding if the application is granted; and fourthly, the degree of prejudice to the Respondent of the application is granted.”

See also: - *Salat v Independent Electoral and Boundaries Commission & 7 others* [2014] KESC 12 (KLR)

18. The circumstances that led to delay in filing of the intended appeal within time have been explained in the applicant’s affidavit with a retort on the same being advanced in the Respondent’s replying affidavit. A perfunctory review of the Applicants affidavit material and annexures thereto confirms that the impugned ruling was delivered on 06/08/2024 (Annexure RGN-1) whereafter a request for certified copy of proceedings and ruling was lodged on 14/08/2024 (Annexure RGN-2). By the Respondent’s affidavit, it can be gathered therefrom that the impugned ruling was uploaded to the CTS system on 06/08/2024 at 23:25Hrs (Annexure EMM-2). Therefore, it is confounding how the Applicants only managed to receive the impugned ruling on 10/09/2024 a month after when the same was uploaded on the same day the lower Court’s decision was rendered. As is, the Applicants’ explanation appears implausible in light of the Respondent’s counter evidence, pointing to laxity on the part of the Applicants and or their counsel, to promptly avail themselves of the impugned ruling despite the same having been uploaded on the CTS as at 06/08/2024 going by the Respondent’s affidavit material.
19. As to the period of delay, the impugned ruling was delivered on 06/08/2024 whereas the Applicants motion was filed on or about 18/09/2024. Notwithstanding the explanation, the period of delay herein appears to be shy of a month and a half, which does not seem to be so inordinate. Makhandia JA in *Patrick Wanyonyi Khaemba v Teachers Service Commission, Board of Management, Kapletingi Mixed Day Secondary School & Francis Tanui* [2019] KECA 112 (KLR), observed that; -

“The law does not set out any minimum or maximum period of delay. All it states is that any delay should be explained, hence a plausible and satisfactory explanation for delay is the key that unlocks the court’s flow of discretionary favour”
20. While the explanation advanced by the Applicants portends insubstantiality and in part exudes what would appear to be indolence, the delay between when the an appeal ought to have been lodged and filing of the instant motion does not classify as being so inordinate as to be prejudicial to the Respondent. In any event, any prejudice occasioned to the Respondent can easily be assuaged by an order of costs.
21. Adjunct to the above, it would equally be a travesty of justice for the Court to drive the Applicants from the seat of justice given their constitutional right to be heard on their appeal.
22. Concerning the arguability of the intended appeal, (Annexure RGN-3), the Court, having perused the grounds in the draft memorandum of appeal, it is satisfied that trial issues worthy of consideration on appeal are demonstrated. That said, based on the language employed in *Mutiso* (supra), the requirement touching on the viability of the intended appeal, is neither mandatory nor sternly applied in an application of this nature.



23. The Court of Appeal in *Vishva Stone Suppliers Company Limited v RSR Stone [2006] Limited* [2020] eKLR stated that “an arguable appeal need not (be one that will) succeed so long as it raises a bona fide issue for determination by the Court.” In the circumstances of this case, the Court is persuaded that to facilitate the Applicants undisputed right of appeal as equally advanced in *Vishva* (supra), leave ought to be granted to the Applicants to file their appeal out of time.

**Whether the Court ought to discharge, vary or set aside the interim orders of stay of execution issued on 04/11/2024?**

24. Despite the manner leading to the issuance of the orders of this Court on 04/11/2024 and the issues canvassed in respect of the Respondent’s motion challenging the said order, it must be remembered that the orders issued therein were interim and temporary stay orders pending determination of the Applicants motion. The relief of stay of execution as sought in the Applicants motion that was the premise of this Court’s orders on 04/11/2024 was effectually to apply during the pendency of the Applicants motion and not pendency of impending appeal, to wit, the conditions set out in Order 42 Rule 6 of the *CPR* would apply.
25. As is, the Applicants motion has since been determined and as a consequence of the said determination, the interim stay orders have since been exhausted and or extinguished. If the Applicants desire to enjoy stay orders pending determination of the now filed appeal, they can move the Court appropriately in the appeal file. Therefore, it would appear that the Respondent’s motion is a futile endeavor and or moot in the circumstance.

**Determination**

26. The upshot is that the Applicants motion dated 18/9/2024 succeeds by way of an order directing the Applicants to file and serve their intended appeal, as evinced in the draft memorandum of appeal, within seven (7) days of this ruling, and the memorandum of appeal within 60 days.
27. For the aforestated, the Respondents motion dated 9/12/2024 fails.
28. Taking into account the Applicants success in its motion, and the Respondent’s failure of its motion, and cumulatively the circumstances pertaining to both motions, an order that each party bears own costs in their respective motions will be fair and just.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 17<sup>TH</sup> DAY OF JULY 2025.**

.....  
**JANET MULWA**  
**JUDGE**

