



REPUBLIC OF KENYA



**Jimmy & 3 others v Kiprono & 2 others (Environment & Land Miscellaneous
Case E060 of 2024) [2025] KEELC 3665 (KLR) (9 May 2025) (Ruling)**

Neutral citation: [2025] KEELC 3665 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT & LAND MISCELLANEOUS CASE E060 OF 2024**

A OMBWAYO, J

MAY 9, 2025

BETWEEN

SARAH JIMMY 1ST APPLICANT

**JOHN MWANGI KARANJA & 2 OTHERS & 2 OTHERS & 2
OTHERS 2ND APPLICANT**

AND

SUSAN KIPRONO 1ST RESPONDENT

**ISABELLA KIPRONO & ANOTHER & ANOTHER &
ANOTHER 2ND RESPONDENT**

RULING

1. The Applicants' filed the instant application dated 19th December, 2024 seeking the following orders:
 1. Spent.
 2. That the Honourable court be pleased to grant leave to the Applicants to file an appeal outside time in that the tribunal misdirected itself in issuing order of eviction without informing the Applicants of the ruling date after the earlier initial date of ruling failed.
 3. That this Honourable court be pleased to issue orders for Status Quo to be maintained pending the filing of the appeal, hearing and determination therein.
 4. That the costs of this application do abide the outcome of the substantive notice of motion application.
2. The Application was based on grounds set out and supported by the Affidavit of Mwangi Karanja the 1st Applicant herein sworn on 19th December, 2024. He stated that the Respondents obtained a decree against the Applicants in the Business Premises Rent Tribunal (BPRT). He further stated that



the ELC in Nakuru delivered judgment in ELCPET E002 OF 2023 on 27th September, 2024 that the suit property was public land under Kenya Industrial Estates (KIE). He stated that the Respondents are at the verge of carrying out execution and that it would be in the interest of justice that the ex parte Bill of Costs be set aside and they be allowed to participate in the process. He stated that no prejudice would be suffered by the Respondent if the application was allowed.

Response

3. The 3rd Respondent filed her Replying Affidavit sworn on 9th April, 2025 where she averred that her name was Caroline Kiprono and not Catherine Kiprono. She averred that there was no authority from the other Applicants for the 1st Applicant to swear affidavit on their behalf. She further averred that the 1st Applicant was a serial litigator as he had filed an appeal in ELCA E022 of 2024 between the same parties which appeal was dismissed on 18th December, 2024. She averred that the orders in the BPRT directed eviction of the 1st Applicant who was no longer a tenant at the premises. She also averred that the judgment which the 1st Applicant was relying on was appealed and the same was pending determination. She added that status quo orders were currently in place. She averred that the present application was overtaken by events as this court has no jurisdiction to hear and determine the same since appeal was dismissed and that the Applicants are no longer tenants in the premises. She added that the issue of ownership was pending determination at the court of appeal.

She urged the court to dismiss the application with costs.

4. The 1st Applicant filed a further affidavit sworn on 28th April, 2025 where he reiterated the contents of his supporting affidavit and stated that the Respondents gave instructions to the auctioneer to have them evicted from the suit premises. He further stated that the memorandum of appeal dated 3rd October, 2024 was yet to be filed hence it had not been lodged. He also stated that the
5. Applicants properties have since been destroyed affecting their business and source of livelihood. He urged the court to allow the application as prayed as no prejudiced would be suffered by the Respondents.

Submissions

6. Counsel for the 1st Applicant filed his submissions on 24th January, 2025 where he identified four issues for determination. The first issue was whether there exists reason for delay. While submitting in the affirmative, he argues that the BPRT on 22nd March, 2024 gave orders of eviction without informing the Applicants. He also submits that they made an error in filing the application for appeal and setting aside of the BPRT's decision. He submits that the application was dismissed as it was made without leave of the court. He relied on the Court of Appeal case of Stecol Corporation Limited V Susan Awuor Mudembi [2021] eKLR.
7. The second issue for determination was whether the matter raises issues of public importance. He submits in the affirmative and relies on the case of Petition ELC PET E002 OF 2023.
8. The third issue was whether the Respondent will suffer prejudice. While submitting in the negative, he relied on Order 51 Rule 14 of the Civil Procedure Rules. The final issue was whether the status quo was warranted. He submits in the affirmative and relied on the case of Republic V National Environment Tribunal Ex parter Palm Homes Limited & Another [2013] eKLR and Kenya Airline Pilots Association (KALPA) V Co-operative Bank of Kenya Limited & Another [2020] eKLR. In conclusion, he urged the court to allow the application as prayed.



Analysis and Determination

9. This court has carefully considered the application and the main issue for determination is whether the 1st Applicant should be granted leave to file an appeal out of time.

10. Section 79G of the *Civil Procedure Act* provides as follows:

“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.”

11. In the instant case, it is not in dispute that the BPRT delivered its decision in BPRT Case No. 175 of 2023 on 22nd March, 2024. It is trite law that the 1st Applicant had 30 days within which it was to file an appeal. It is not in dispute that the 1st Applicant without leave of the court filed a Memorandum of Appeal dated 16th May, 2024. That the 4th Respondent in turn filed a Preliminary Objection which the court vide its ruling delivered on 18th December, 2024 struck out the appeal with costs for having been filed without leave of the court. The 1st Applicant has now come to court seeking extension of time to file appeal.

12. It is noteworthy that this court has the discretion to extend time which ought to be exercised within the principles of the law. In the case of *Nicholas Kiptoo Arap Korir Salat V Independent Electoral and Boundaries Commission & 7 others* [2014] KECA 782 (KLR) the court held 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 a 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 to be 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.”

13. Further, in the case of *Nyamboki V Gathuru (Application 6 of 2019)* [2019] KESC 44 (KLR) the court held that:

“..., the Court has to consider whether the explanation given for any delay is reasonable and credible; whether there also exist extenuating circumstances to enable the Court exercise its unfettered jurisdiction; and that the delay, in any event, should not be so inordinate as to



leave no doubt, that an applicant has been slothful, and filed such an application as an after-thought.”

14. It is a fact that the time lapsed between the date of the BPRT decision and the date of filing this application was approximately nine months. It is noteworthy that the 1st Applicant has failed to explain the reason for delay in filing the appeal.
15. It is trite that this court has power to enlarge time but, in the absence, of reasonable explanation as to the delay, I find that the 1st Applicant is not deserving of this courts exercise of discretion in his favour.
16. Consequently, the application for orders of extension of time fails in its entirety. It is so ordered.

SIGNED BY: HON. JUSTICE ANTONY O. OMBWAYO

THE JUDICIARY OF KENYA.

NAKURU ENVIRONMENT AND LAND COURT

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