



M’Kirichu v Thurania & another (Environment and Land Miscellaneous Application E008 of 2025) [2025] KEELC 4911 (KLR) (30 June 2025) (Ruling)

Neutral citation: [2025] KEELC 4911 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E008 OF 2025**

BM EBOSO, J

JUNE 30, 2025

BETWEEN

M’IKIRIMA M’KIRICHU APPLICANT

AND

SAMSON THURANIRA 1ST RESPONDENT

JAPHETH KOBLIAH MARANYA 2ND RESPONDENT

RULING

1. Falling for determination in this ruling is the notice of motion dated 7/2/2025, brought by M’Kirima M’Kirichu [the applicant]. Through it, the applicant seeks: (i) orders of stay of execution of the judgment issued by the trial court on 21/12/2022 in Meru CMC E&L Case No. 349 of 2015, pending the hearing and determination of an intended appeal; and (ii) an order enlarging the time within which to lodge an appeal against the judgment rendered on 21/12/2022 in Meru CMC E & L Case No. 349 of 2015.
2. The application was premised on the grounds set out in the motion and in the applicant’s affidavit dated 7/2/2025. It was canvassed through written submissions dated 21/3/2025, filed by Gichunge Muthuri & Co Advocates. The case of the applicant is that, the judgment of the lower court in Meru CM ELC No. 349 of 2015 was delivered on 21/12/2022 in favour of the respondents. He immediately instructed his advocates to institute an appeal against the said judgment. The advocates filed an appeal in the High Court, to wit, Meru HCCA E015 of 2023 vide a memorandum of appeal dated 20/1/2023 within the stipulated time frame of thirty (30) days. The said appeal was inadvertently filed and registered as a civil appeal in the High Court instead of it being filed as an appeal in the Environment and Land Court.
3. The applicant adds that the said appeal was heard and struck out by the High Court for lack of the requisite jurisdiction. It is his case that he stands to lose the suit land if the application for stay orders



is not allowed. He states that the delay was caused by an inadvertent mistake on part of his advocates. The applicant adds that the respondents are moving with very high speed to execute the judgment and are likely to dispose the suit land to third parties.

4. The respondents opposed the application through grounds of opposition dated 3/3/2025 and written submissions dated 7/3/2025, filed by Mutembei & Kimathi Advocates. The case of the respondent is that, the delay in bringing the present application was inordinate and has not been explained. The respondent adds that there cannot be a stay order against a negative order.
5. The court has considered the application, the response to the application and the parties' respective submissions. The court has also considered the relevant legal frameworks and jurisprudence. The two key questions that fall for determination in this ruling are: (i) Whether the application meets the criteria for enlargement of the limitation period for lodging an appeal in this court; and (ii) Whether the application meets the criteria upon which this court exercises jurisdiction to grant an order of stay of execution pending the hearing and disposal of an appeal before it. I will analyze and dispose the two issues sequentially in the above order.
6. The limitation period for lodging an appeal to this court against judgments of the lower courts is set by Section 16A of the *Environment and Land Court Act* and Section 79G of the *Civil Procedure Act*. The frameworks in the two statutes provide for a limitation period of 30 days from the date of delivery of judgment. The two frameworks vest in this court discretionary jurisdiction to enlarge the limitation period. The legislated guiding principle in the two frameworks is that the discretionary jurisdiction should be exercised on the basis of good and sufficient cause.
7. The general jurisprudential principles that guide our courts whenever invited to exercise the above jurisdiction were outlined by the Supreme Court of Kenya in the case of Nicholas Kiptoo Arap Korir Salat Vs Independent Electoral and Boundaries Commission & 7 others [2014] 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 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.
8. The judgment which is the subject of the intended appeal was rendered on 21/12/2022. The applicant has explained that he lodged an appeal against the said judgment within the prescribed limitation period of 30 days. He has further explained that his appeal was inadvertently lodged in the Civil Registry of the Meru High Court instead of it being lodged in the Meru ELC Registry. Consequently, when the appeal came up for judgment, the Learned Judge seized of the appeal [Muriithi J] noted that the High Court did not have jurisdiction to entertain the appeal and struck the appeal out for want of



jurisdiction. This prompted the applicant to bring the application under consideration. He terms the error in lodging the aborted appeal as inadvertent.

9. The 1st respondent did not oppose the application. The 2nd respondent filed grounds of opposition and written submissions. He did not controvert the affidavit evidence which the applicant tendered. The gist of the 2nd respondent's opposition to the plea for enlargement of time is that there has been inordinate delay in bringing the application and the delay has not been explained.
10. It is not true that the applicant has failed to explain the delay. He has explained that he lodged an appeal in the wrong Court Registry. In the absence of any controverting evidence by the respondents, the court is satisfied that the explanation tendered by the applicant constitutes sufficient cause that warrants enlargement of time, subject to the applicant indemnifying the 2nd respondent through an award of costs of the application.
11. On whether the application meets the criteria for an order of stay of execution, it is clear from the impugned judgment that the decree of the trial court is a negative decree. The decree does not have a positive order that would attract an order of stay of execution. Our courts have, in a line of decisions, been categorical that in the absence of a positive order, an order of stay of execution does not lie (see *Western College of Arts & Applied Science Vs Oranga & others* [1976] KLR 63). Consequently, the finding of the court on the second issue is that the criterion for granting of an order of stay of execution has not been met.
12. In the end, the application dated 7/2/2025 is disposed as follows:
 - a. The time for lodging an appeal against the Judgment rendered in Meru CMC Civil Case No. 349 of 2015 is enlarged by 10 days.
 - b. The plea for an order staying execution of the said Judgment is declined on the ground that a dismissal order is a negative order which does not attract an order of stay of execution.
 - c. The applicant shall bear the 2nd respondent's costs of this application.

DATED SIGNED AND DELIVERED AT MERU THIS 30TH DAY OF JUNE 2025

B M EBOSO [MR]

JUDGE

In The Presence Of

Miss Mugo for the Applicant

Court Assistant – Mr. Tupet

