



**Nabea v Ngeera (Environment and Land Miscellaneous Application
E005 of 2025) [2025] KEELC 4889 (KLR) (30 June 2025) (Ruling)**

Neutral citation: [2025] KEELC 4889 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E005 OF 2025**

**BM EBOSO, J
JUNE 30, 2025**

BETWEEN

ADAM MUTHURI NABEA APPLICANT

AND

ISAYA KOBIA NGEERA RESPONDENT

RULING

1. Falling for determination in this ruling is the notice of motion dated 6/2/2025, brought by Adam Muthuri Nabea (the applicant). Through it, the applicant seeks: (i) an order enlarging the time within which to lodge an appeal against the ruling rendered on 28/11/2024 in Meru PMCC No. 94 of 2022; and an order staying execution of the above ruling, pending the hearing and determination of the intended appeal.
2. The application was premised on the grounds set out in the motion and in the applicant's affidavit dated 6/2/2025. It was canvassed through written submissions dated 19/3/2025, filed by Igweta Muriithi & Co. Advocates. The case of the applicant is that Judgment was rendered in Meru PMCC No. 94 of 2022 on 29/4/2024 by Hon. Ayuka. He was aggrieved by the said judgment and he filed an application for review of the judgment. The said application, dated 24/5/2024, was heard and the lower court rendered a ruling on 28/11/2024 rejecting the plea for review. He intends to file an appeal against the said ruling but the limitation period has lapsed.
3. The applicant contends that the delay in filing an appeal was occasioned by the inadvertent mistake of his advocate who mistakenly applied for enlargement of the period for appealing against the judgment instead of filing an appeal against the ruling. The applicant further contends that upon his advocate realizing her mistake, she withdrew the said application, Misc. App No. E045 of 2022, on 5/2/2025
4. The applicant states that the mistake of counsel should not be visited on him. He adds that being dissatisfied with his previous advocate, he sought the services of a different advocate. The applicant



contends that he lives on the suit land, adding that his eviction from the suit land will render his family homeless.

5. The respondent opposed the application through a replying affidavit dated 7/3/2025 and written submissions dated 31/3/2025, filed by Mungai J.K & Co. Advocates. The case of the respondent is that, the applicant has not demonstrated a reasonable explanation for the delay in filing the appeal. The respondent adds that the applicant is forum- shopping because he has filed several applications, one of them being Meru Misc Application No. 45 of 2024 which his advocate withdrew after he realized that the application was fatally defective.
6. The respondent argues that the ruling which the applicant seeks to appeal against related to an application for review of a judgment rendered more than 10 months ago and no stay order had been granted, contending that the instant application has been overtaken by events because he is in the process of enforcing the said judgment. He adds that a perusal of the memorandum of appeal demonstrates that the applicant does not have an arguable appeal.
7. The respondent states that the instant application is an abuse of the court process because the applicant seeks to deny him his right to enjoy the fruits of his judgment obtained more than 10 months ago. He adds that litigation must come to an end.
8. 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 questions to be answered in this ruling are: (i) Whether the criteria for enlargement of limitation period for lodging an appeal to this court has been met; and (ii) Whether the criteria for granting an order of stay of execution pending disposal of an appeal by this court has been satisfied. I will be brief in my sequential analysis and disposal of the two issues.
9. 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.
10. 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] eKLR as follows:
 1. Extension of time was not a right of a party. It was an equitable remedy that was only available to a deserving party at the discretion of the court;
 2. A party who sought extension of time had the burden of laying a basis for it to the satisfaction of the court;
 3. Whether the court ought to exercise the discretion to extend time, was 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.
11. In the application under consideration, the applicant has explained that the impugned ruling was rendered on 28/11/2024. He contends that instead of his previous advocate filing a memorandum of appeal against the said ruling, he filed an application seeking an order enlarging time for lodging an appeal against the preceding judgment rendered on 29/4/2024. He adds that upon realizing the mistake, his counsel withdrew the application on 5/2/2025. The applicant thereafter brought the present application on 8/2/2025. The applicant attributes the delay to the above mistake on the part of his advocate.
12. The above explanation has not been controverted. The court has looked at the exhibited draft memorandum of appeal in which the applicant has itemized six (6) grounds of appeal.
13. The approach to be adopted by courts of law when confronted with explanations such as the above was outlined by Apaloo JA in Philip Kiptoo Chemwolo and another V Augustine Kubebe (1986) eKLR as follows:

Blunders will continue to be made from time to time and it does not follow that because a mistake has been made that a party should suffer the penalty of not having his case determined on its merit. I think the broad equity approach to this matter is that unless there is fraud or intention to overreach, there is no error or default that cannot be put right by payment of costs. The court, as is often said exists for the purposes of deciding the rights of parties and not for the purposes of imposing discipline...”
14. Taking into account the explanation tendered by the applicant and the prevailing jurisprudence, the court takes the view that the criteria for enlargement of time has been satisfied. The respondent will be identified through an award of costs of the application.
15. On the question relating to an order staying the ruling rendered on 28/11/2024, the relevant criteria is contained in Order 42 rule 6(2) which provides as follows:

No order for stay of execution shall be made under subrule (1) unless;

 - (a) the court is satisfied that substantial loss may result to the applicant unless the order is made and that the application has been made without unreasonable delay; and
 - (b) such security as the court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the applicant.
16. The court notes that the impugned ruling related to two applications: (i) the applicant’s notice of motion dated 24/5/2024 in which the applicant sought an order reviewing the judgment dated 29/4/2024; and (ii) the respondent’s application dated 6/4/2024 in which the respondent sought an order enjoining the OCS of Mikinduri Police Station to “oversee and supervise compliance” with the decree of the lower court. The lower court rejected and dismissed the applicant’s application for review, meaning that the applicant’s application attracted a negative order. The prevailing jurisprudence is that a negative order does not attract an order of stay of execution.
17. There is nothing substantive to stay in the ruling dated 28/11/2024. Consequently, the finding of this court is that the application dated 6/2/2025 does not meet the criteria for granting an order of stay of execution pending disposal of an appeal.



18. In light of the above findings, the application dated 6/2/2025 partially succeeds in the following terms:
- a. The plea for enlargement of time is allowed and the period for lodging an appeal against the ruling rendered on 28/11/2024 in Tigania PMC E &L Case No. E094 of 2022 is enlarged by seven (7) days from today.
 - b. The plea for an order of stay of execution of the ruling dated 28/11/2024 is rejected and dismissed.
 - c. The applicant shall bear the respondent's costs of this miscellaneous application.

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

B M EBOSO [MR]

JUDGE

In the presence of

Court Assistant – Mr. Tupet

Mrs. Otieno holding brief for Mr. Igweta for the Applicant

