



**Ngala v Mwachofi (Environment and Land Miscellaneous Application
E005 of 2025) [2025] KEELC 4634 (KLR) (20 June 2025) (Ruling)**

Neutral citation: [2025] KEELC 4634 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT VOI
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E005 OF 2025
EK WABWOTO, J
JUNE 20, 2025**

BETWEEN

JOHN MWASI NGALA APPLICANT

AND

VALENTINA GOMBE MWACHOFI RESPONDENT

RULING

1. This Ruling is in respect to an application dated 29th April 2025 seeking for the following reliefs:-
 - i.spent.
 - ii. That pending hearing and determination of this application and the lodging of the intended appeal this court be pleased to issue an order staying the judgment, decree and all consequential orders made therein in Voi ELC Case No 155 of 2015.
 - iii. That the proposed Appellant be granted leave to appeal out of time against the whole judgment of the Chief Magistrate Court at Voi delivered on 29th August 2024 in Voi ELC Case No 155 of 2015 without notice to the Applicant.
 - iv. That the Memorandum of Appeal annexed hereto be deemed as duly filed and served.
 - v. That the costs of this application be in the cause.
2. This application was premised on the grounds on the face of the application and also supported by the affidavit sworn by the Applicant on the 29th April 2025.
3. The application was opposed by the Respondent vide an affidavit sworn by Valentine Gombe Mwachofi on 6th May 2025. It was deponed that there is inordinate delay in bringing the application since judgment was obtained on 29th September 2024. The application is an abuse of the court process



since the Applicant has filed another case being ELC No E030 of 2024 which was filed after delivery of judgment in the earlier matter and the said cases should not run concurrently.

4. The Respondent also averred that the application does not meet the threshold for grant of the orders sought, the same ought to be dismissed since he will be greatly prejudiced if the orders sought are granted.
5. Pursuant to the directions issued by the court, the said application was canvassed by way of written submissions. The Applicant filed written submissions dated 2nd June 2025 while the Respondent filed written submissions dated 9th June 2025.
6. The Applicant submitted that he is likely to suffer substantial loss if the application is not allowed because he has an arguable case and that ELC Case No E030 of 2024 is yet to be heard and determined.
7. Citing Section 79G of the *Civil Procedure Act* and Order 50 Rule 6 of the *Civil Procedure Rules*, it was submitted that the Applicant has met the principles required for extension to file the appeal out of time. The cases of *Omar Shewe v Marian Rashe Yafar* [2020] eKLR and *First American Bank of Kenya Ltd v Gulab P. Shah & 2 others* [2002] EA 65 were cited in support.
8. The Respondent on the other hand submitted that the application lacked merit and the same ought to be dismissed. It was submitted that the judgment was delivered on 29th August 2024 being 9 months ago. The delay is inordinate. The Applicant has put up structures in the suit land in total defiance of the court order and that the Respondent stands to suffer more prejudice should the application be allowed.
9. The court has considered the application and the main issue for consideration is whether this application is merited.
10. In this application, the court needs to address itself on whether it should exercise its discretion to allow the application to file an appeal out of time and grant stay of execution against the judgment of the trial court. The law regarding exercise of the Court's discretion is now settled. From the holding of Harris J (as he then was), where he had this say on the case of *Shah v Mbogo* [1967] EA 116 and 123B:-

“The discretion is intended so to be exercised to avoid injustice or hardship resulting from accident, inadvertence, or excusable mistake or error, but is not designed to assist the person who has deliberately sought whether by evasion or otherwise, to obstruct or delay the course of justice.”
11. The following are material in considering the said application; the reason for the delay, the period of delay, whether an appeal would still be effective and orders will not be made in vain, whether the appeal is arguable and whether there are other alternative remedies.
12. In the instant application judgment was delivered 9 months ago. It therefore follows that the delay is inordinate. The reason offered for the same is that the Applicant had problems with his previous Advocate at the time of delivery of the judgment. This in itself is not a plausible reason to redeem the delay. It is evident that cases belong to litigants and not Advocates and litigants must always demonstrate their interest in pursuing and following up on their matters. As was stated in the case of *Savings & Loans Ltd. v Susan Wanjiru Muritu* HCCS No 397 of 2002 whose reasoning this Court adopts that a litigant has a duty to pursue the prosecution of his or her case and to constantly check with the advocate the progress of the case.
13. This court therefore finds and holds that the Applicant has not provided a plausible explanation for the failure to lodge an appeal against the judgment of the lower court in time.



14. Having observed as above, it is the finding of this court that the application dated 29th April 2025 is not merited, the same cannot be allowed and the said application is dismissed in its entirety with costs payable to the Respondent assessed at Kshs 15,000/=. This being a miscellaneous application, this file is thus marked as closed.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT VOI THIS 20TH DAY OF JUNE 2025.

E. K. WABWOTO.

JUDGE.

In the presence of:-

Mr. Mwazighe for the Applicant.

Mr. Mwinzi for the Respondent.

Court Assistant: Mary Ngoira.

