



**Lokoret v Ngolepus (Environment and Land Appeal E019 of 2025)
[2025] KEELC 6202 (KLR) (24 September 2025) (Ruling)**

Neutral citation: [2025] KEELC 6202 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
ENVIRONMENT AND LAND APPEAL E019 OF 2025**

**CK NZILI, J
SEPTEMBER 24, 2025**

BETWEEN

ATODO LOKORET APPLICANT

AND

EMILY TITIKA NGOLEPUS RESPONDENT

(Being an Appeal from the Ruling and Order of the Chief Magistrate's Court, Land Case No. E022 of 2023 at Kapenguria delivered 17/4/2025)

RULING

1. Through an application dated 18/6/2025, the court is asked to extend time to file an appeal out of time, against a judgment delivered in the lower court on 17/4/2025, and to stay its execution, pending hearing and determination of the intended appeal. The reasons are on the face of the application and in a supporting affidavit of Atodo Lokoret, sworn on 18/6/2025.
2. It is deposed that the delay to file the appeal was occasioned by the supply of certified copies of the proceedings, following a request by a letter dated 20/5/2025, attached to the affidavit as annexure marked API-1.
3. The application is opposed through a replying affidavit sworn by Emily Titika Ngolepus on 16/7/2025. The respondent deposes that the judgment dismissing the suit was delivered in the presence of both counsels on record for the parties on 17/4/2025, to which each was supplied with a copy of the judgment, and a stay was also granted to the applicant to file an appeal.
4. The respondent states that since the judgment was also uploaded to the e-system portal immediately upon delivery, the same was always available to the applicant to appeal. The respondent states that the applicant, therefore, had enough time to file an appeal, and no good reasons have been provided as to why the appeal was not filed on time or at all.



5. The respondent deposes that she purchased the land on 9/4/2022, took vacant possession, and immediately started constructing a home, only for the applicant to seek injunctive orders to stop the process at the lintel level, now going to waste. Therefore, the respondent terms the application filed after two months not only as a waste of time, but also an attempt to deprive him of the fruits of her judgment.
6. The respondent deposes that the applicant has also not demonstrated any substantial loss or met the threshold of being entitled to both an extension of time and a stay of execution.
7. The applicant relies on written submissions dated 16/7/2025. Reliance is placed on Antoine Ndaiye -vs- African Virtual University [2015] eKLR and Manna -vs- Mbomere & Others ELC Appeal E008 of 2022 [2022] KEELC 12792 [KLR]. It is submitted that unless the orders sought are granted, the suit land will be dwelt by registering it in the name of the respondent as the legal and beneficial proprietor of a plot measuring 50ft by 100ft, comprised of parcel No. West Pokot/Chepareria/2920, and further to that, the respondent was in the process of fencing it before the decree was extracted, signed, and served upon him. Reliance is placed on Butt -vs- Rent Restriction Tribunal [1979] eKLR.
8. On the unreasonable delay, the applicant submits that the application was filed as soon as the proceedings were supplied. Further, the applicant submits that extension of time is a discretionary power to be exercised by this court under Section 79(a) and 95 of the *Civil Procedure Act*. Reliance is placed on Nyamboki -vs- Gathuru [2019] KESC 44 (KLR), Nicholas Kiptoo Korir Salat -vs- Independent Electoral and Boundaries Commission & others [2014] eKLR, Paul Musoti Wambua -vs- Attorney General & Others [2015] eKLR, and Republic -vs- Rosemary Wairimu Munene; Ex parte Ihururu Dairy Farmers Co-operative Society Ltd Judicial Review Application No 6 of 2004.
9. Section 79(a) of the *Civil Procedure Act* provides that an appeal from the lower court to the High Court be filed within 30 days upon the delivery of the judgment or ruling appealed against. The court, under Section 20 of the *Environment and Land Court Act*, has the discretion to allow for the filing of an appeal out of time. The parameters to consider were set out in Wasike -vs- Swala [1984] KLR 91 as the reasons for the delay, and decree of prejudice to the opposite party.
10. In Chairman, Kenya National Union of Teachers & another -vs- Inyangala & 2 others [2018] KESC 37 (KLR), the court declined to expand time since the explanation given by the applicant was unsatisfactory and unreasonable, for an inordinate delay of 1 year 3 months, hence had not met the principles set in Nicholas Kiptoo Arap Salat -vs- IEBC (supra).
11. In Kamuthi Farmers Co-operative Society Ltd -vs- Nairobi City Council Appl. E004 of 2025 [2025] KESC 28 [KLR] (16th May 2025) (Ruling), the court held that an extension of time was not a matter of right, but an equitable relief granted to a deserving party who demonstrates diligence and provides a satisfactory explanation for the delay.
12. The court that said an applicant in such a case must show that the delay was not inordinate, that it acted promptly upon becoming aware of the lapse and that no undue prejudice would be occasioned to the respondent, if the extension is granted. The court held that there was need to present evidence that justified the delay, more so that the circumstances occasioning it was beyond the control of the applicant.
13. In Kimani -vs- Sigona Jua Kali Association & Others, Appl. E005 of 2025 (2025) KESC 24 [KLR] (CIV) (16th May 2025) (Ruling), the court held that the applicant did not provide satisfactory evidence to substantiate the claim that she became aware of the ruling in mid-January 2025. The court held that no correspondence or documentation was produced demonstrating her attempts to inquire into the



- status of her matter with the former lawyer; otherwise, she has the responsibility to show interest and to follow up on her case even when represented by counsel, whether or not the party was literate.
14. In *Athi River Steel Plant Ltd -vs- Rao & Others* Appl. E003 of 2025 [2025] KESCE 23 [KLR] (16th May 2025) (Ruing), the court said that a decision on extension of time by nature is discretionary, to be exercised on sound reasons.
 15. The court held that the burden of proof lies with the applicant to make a case for a stay of execution. Discretion is to be exercised on a case-by-case basis, based on whether there are reasonable reasons for the delay, whether the application was brought without undue delay, and public interest in the matter.
 16. From the case law above, a party seeking such orders must apply within a reasonable time, demonstrate substantial loss, and offer security for the realization of the decree should the appeal not succeed. The trial court in this matter simply dismissed the applicant's suit. A negative order is not capable of being stayed. Sufficient cause has to be shown by the applicant why a stay should be granted, as held in *Antoine Ndaiye -vs- African Virtual University* (supra) and in *Butt -vs- Rent Restriction Tribunal* (supra).
 17. In *RWW -vs- EKW* [2019] eKLR, the court observed that the purpose of a stay is to preserve the subject matter in dispute so that the rights of the appellant are safeguarded, and if the appeal is successful, it is not rendered nugatory. In doing so, the court must balance the right of appeal against that of the successful party, who is entitled to the fruits of his judgment.
 18. Execution is a lawful process as held in *James Wangalwa & Another vs Agnes Naliaka Cheseto* [2012] KEHC 1094 (KLR).
 19. An applicant has to show with tangible evidence how the essential core or substratum of the appeal would dissipate in the absence of a stay. In this application, the applicant, other than alleging loss, has not attempted to demonstrate how a negative order, if executed, would occasion him substantial loss.
 20. Written submissions cannot replace pleadings or amount to evidence. The respondent has expressed fear and or prejudice if a stay is granted. The respondent says that stay orders were granted at the delivery of the judgment. The applicant is silent on the fact and does not explain the inordinate delay in seeking formal stay orders since 17/4/2025.
 21. The purpose of security, as held in *Arun C. Sharma -vs- Ashana Raikundalia T/A A. Raikundalia & Co. Advocates & 4 others* [2014] KEHC 1412 (KLR), is to guarantee the due performance of the decree as may be ultimately binding on the applicant. The applicant has not offered any, including depositing the original title deed or consideration before the court. When the letter seeking proceedings and ruling was filed and when the same were availed is not substantiated by way of court stamps, including the date when the proceedings and judgment were certified and or collected. It is not the business of the court to fill in gaps in the party's pleadings.
 22. The applicant has not controverted the assertion by the respondent that the judgment was uploaded immediately to the e-portal. The applicant has not substantiated or demonstrated the reasonable reasons for the delay and the likely prejudice occasioned so far to the respondent, whose construction was stopped or is at risk of wastage. The applicant has not offered any security for the due realization of the decree should the appeal not succeed. Similarly, the order sought to be stayed was a negative order.
 23. The upshot is that I find the application dated 18/6/2025 lacking merit. It is dismissed with costs.
 24. Orders accordingly.



**RULING DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT
KITALE ON THIS 24TH DAY OF SEPTEMBER 2025.**

HON. C.K. NZILI

JUDGE, ELC KITALE.

In the presence of:

Court Assistant - Dennis

Chebet for the respondent present

Akwobi for Bunyasi for the

