



Mwangi (Suing as the Legal Representative of Joseph Macharia Ruku (Deceased)) v Miatu & 3 others (Miscellaneous Application E012 of 2025) [2025] KEELC 6479 (KLR) (30 September 2025) (Ruling)

Neutral citation: [2025] KEELC 6479 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYAHURURU
MISCELLANEOUS APPLICATION E012 OF 2025
LN MBUGUA, J
SEPTEMBER 30, 2025**

BETWEEN

**ANTHONY MACHARIA MWANGI APPLICANT
SUING AS THE LEGAL REPRESENTATIVE OF JOSEPH MACHARIA RUKU
(DECEASED)**

AND

**JOSEPH GICHUKI MIATU 1ST RESPONDENT
SETTLEMENT FUND TRUSTEES 2ND RESPONDENT
KALEE MAINGI 3RD RESPONDENT
ATTORNEY GENERAL 4TH RESPONDENT**

RULING

1. Before me is a Notice of Motion application dated 9.6.2025 brought under sections 1A, 1B and 63(c) and (e) of the *Civil Procedure Act*, Order 42 Rule 6, Order 50 Rule 6 and Order 51 of the Civil Procedure Rules. The applicant seeks orders that there be a stay of execution of the Judgement of Hon. Hezekiah Evans Keago delivered on 9.10.2024, the decree and any consequential orders arising therefrom as well as enlargement and extension of time within which to lodge an appeal against the said judgment.
2. The application is premised on grounds on the face of the application and in the supporting affidavit of the applicant. He avers that the execution in CMELC No. 22 of 2019 is imminent and will render the appeal nugatory and the applicant will suffer prejudice and irreparable loss if the 1st Respondent takes possession of the suit property and a title document is issued before the appeal is determined.



3. The Applicant contends that the trial court in its judgment made a declaration that Land Title No. Nyandarua/Olgoro rok Salient/2337 rightfully belongs to the 1st Respondent. He filed a review on 21.11.2024 since the 3rd Defendant had discovered correspondence between the 1st Defendant and the Plaintiff that were not within the knowledge of the 2nd and 3rd Defendants at the time of prosecuting the case. The review was however dismissed in a ruling rendered on 14.5.2025.
4. In opposition thereof, the 1st Respondent Joseph Gichuki Miatu filed a replying affidavit sworn on 8.7.2025 where he avers that the decision whether or not to extend time for appealing is discretionary and the issues to be considered by the court are the length of the delay, the reason for the delay, the chances of the appeal succeeding if the application is granted and the degree of prejudice to the respondent if the application is granted. He deponed that the Applicant's appeal has no chances of succeeding since the lower court considered all the facts, the evidence adduced before it and the law in coming to its decision.
5. He deponed that he is the rightful owner of the suit property and the Applicant has no interest whatsoever over it, thus the estate will not suffer irreparable loss if the application is not allowed. The 1st respondent further deponed that the application is a tactic by the Applicant to delay the execution of the judgement and to deny him the fruits of the judgement without giving any justifiable or reasonable ground to warrant a granting of the prayers sought in the application.
6. I have considered the application, the response in opposition thereto and the submissions of the applicant noting that no submissions were filed by the respondents.
7. A perusal of the Memorandum of Appeal dated 27.5.2025 indicates that the applicant is appealing against the Judgment of the trial court delivered on 9.10.2024 in ELC CM 22 OF 2019. The reasons given for the delay in not lodging an appeal on time (within 30 days) are that the appellant had filed an application for review of the judgment on 21.11.2024, but the same was dismissed on 14.5.2025.
8. The provisions of Section 80 of the Civil Procedure Act stipulates that;
 - “ Any person who considers himself aggrieved—
 - (a) by a decree or order from which an appeal is allowed by this Act, but from which no appeal has been preferred; or
 - (b) by a decree or order from which no appeal is allowed by this Act, may apply for a review of judgment to the court which passed the decree or made the order, and the court may make such order thereon as it thinks fit”.
9. The question as to whether a party can pursue a review as well as an appeal in respect of the same order/ judgment was posed in the Court of Appeal case of Paul Misoro Orago v City Council of Nairobi (Civil Appeal 307 of 2014) [2017] KECA 645 (KLR) (Civ) (24 March 2017) (Judgment) as follows;
 - “ But can a party who has unsuccessfully pursued review of judgment be allowed to lodge an appeal against same judgment? We think not and it is indeed undesirable. Instead, should he be unhappy with the outcome of the review, the recourse available to him is an appeal against the ruling on review...”



10. While in *Watamu Men Fridays Limited v Attorney General & 4 others* (Environment & Land Case 104 & 4 of 2019 (Consolidated)) [2025] KEELC 4786 (KLR) (26 June 2025) (Ruling) Neutral citation: [2025] KEELC 4786 (KLR), the court stated that;

“A party cannot simultaneously pursue both an appeal and a review in respect of the same decision. The two remedies are mutually exclusive and cannot be invoked concurrently or sequentially. To do so would amount to an abuse of the court process.”

11. What resonates from the statute and the case law is that a party who elects to pursue a review on a judgment cannot turn around to pursue an appeal in respect of the same judgment, the appeal would only lie in regard to the ruling on review but not the judgment. That being the case, I find that the prayer to extend time to appeal is unmerited. In the same breadth, the prayer for stay cannot be granted in a vacuum.

12. In the circumstances, I find that this miscellaneous suit is not merited, the same is hereby dismissed with costs to the 1st respondent.

DATED, SIGNED AND DELIVERED AT NYAHURURU THIS 30TH DAY OF SEPTEMBER 2025 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

In the presence of:

Vanessa CA

M/S Akinyi H/B for Mr. Odhiambo for the Applicant

