



REPUBLIC OF KENYA



**Muchori v Okumu (Appeal E001 of 2025)
[2025] KEELC 6267 (KLR) (25 September 2025) (Ruling)**

Neutral citation: [2025] KEELC 6267 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
APPEAL E001 OF 2025
CK YANO, J
SEPTEMBER 25, 2025**

BETWEEN

MARGARET WAMBUI MUCHORI APPELLANT

AND

GEORGE W OKUMU RESPONDENT

RULING

1. By an application dated 22nd January, 2025 the Appellant/Applicant seeks the following orders:-
 1. Spent
 2. Spent
 3. That there be an extension of time to appeal against the judgment in Eldoret Chief Magistrate Court ELC No. E002 of 2021 - George C.W. Okumu vs Margaret Wambui Michori and the appeal herein be deemed validated by the grant of the extension.
 4. That there be a stay of execution of the judgment in Eldoret Chief Magistrate Court ELC No. E002 of 2021 - George C.W. Okumu vs Margaret Wambui Michori pending the hearing and determination of this application.
 5. That the costs of this application be provided for.
2. The Appellant's case is that after the suit was heard, it was fixed for the delivery of judgment on 19th April, 2024, but was deferred severally and was eventually delivered without her notice. She deponed that on 15th January, 2025, she was called by the OCS, Kapyemit Police Station, who informed her that he had received a judgment from court requiring her to hand over vacant possession of the land. That she then asked her advocates to check and found that the judgment was delivered on 25th April, 2024 and published on the Court Tracking System on 30th April, 2024.



3. The Appellant expressed dissatisfaction with the judgment of the trial court arguing that it granted reliefs beyond the scope of the pleadings, thus the court acted without jurisdiction and delivered its decision without notice. She explained that she is old and ailing and has not been able to consistently follow up with his advocate on the matter, but stated that her appeal raises arguable matters, hence it ought to be validated.
4. The Appellant deponed that she stands to suffer irreparable loss since she has been in possession of the land for 10 over years, and there is a risk that the Respondent may sell the land to a 3rd Party if allowed to take possession of it. Further, that she is claiming Plot No. 137 while the Respondent claims Plot No. 104, thus there is sufficient cause to grant the orders sought. She added that the application was made without undue delay.
5. In a Replying Affidavit sworn on 30th January, 2025, the Respondent clarified that the judgment was not for vacant possession but a temporary injunction against the Appellant. He deponed that the application is late as execution has already been finalised. The Respondent averred that judgment was delivered a year ago and he is now in possession of the land and has since made extensive developments on his land, hence there is nothing to stay.
6. The Respondent refuted the allegation that the Appellant was unaware of the judgment and explained that he served the Appellant's Advocate with a Bill of Costs in July, 2024 yet the Appellant has not appealed to date. He accused the Appellant of sitting on her rights and further alleged that the instant Motion is wrongfully before court as it was filed without leave of court. He added that the trial court was well within its rights to issue further orders depending on its observations at the hearing and evidence.
7. The Respondent deponed that he is claiming Parcel No. Kapyemit Block 20/104, now identified as No. 137. He also alleged that the Appellant did not show any substantial loss or provide any security and that her application did not meet any of the conditions under Order 42 Rule 6 for the grant of a stay of execution. He concluded that since the trial court issued an injunction, the appeal can only deal with whether it was rightly issued but not to stay the execution as he has all along been on the suit land.
8. The Appellant filed a Supplementary Affidavit dated 24th February, 2025 in response stating that the trial court issued a mandatory injunction for vacant possession. She deponed that the application has not been overtaken by events as she is still in occupation of the land and annexed a photograph to that effect. She pointed out that the Respondent had not annexed any letter from the OCS, Baharini police Station confirming that the decree has been executed. She denied the allegation that the Appellant had developed the land as he is not in possession.
9. The Appellant deponed that Section 79G of the *Civil Procedure Act* allows a party to file a Memorandum of Appeal and seek retrospective validation through extension of time. She reiterated that the Appeal raises fundamental jurisdictional issues and ought to be allowed to proceed, and expressed willingness to abide by any conditions that may be set by the court.

Submissions:

10. The Application was canvassed by way of written submissions.

Appellant's Submissions;

11. The Appellant's submissions in support of the Motion are dated 24th February, 2025. On the extension of time, Counsel for the Appellant submitted that Section 79G of the *Civil Procedure Act* contemplates that a party may file a memorandum of appeal before seeking leave. Counsel submitted that the only



condition for extension of time is that a party must show good and sufficient cause, which has been explained that judgment was given without notice contrary to Order 21 Rule 1. On this issue, Counsel relied on *Gerald M'limbine vs Joseph Kangangi* (2008) eKLR, *Maritim vs Kibaru* (2005)2 EA 162 and *Mwangang'azi & 32 Others vs Kenya Ports Authority & 4 Others* (Civil Application E096 of 2023) (2024) KECA 698 (KLR).

12. On the issue of stay of execution, Counsel submitted that the Appellant will suffer substantial loss if the Respondent takes over the land and sells to a third party, rendering it impossible to recover if the Appeal succeeds. Counsel further submitted that the Appellant has been in possession of the land for 10 years, and further that they are claiming different parcels of land as can be seen from the pleadings. Counsel added that the application has been made without unreasonable delay and that she is willing to abide by any conditions the court may set. Counsel prayed that the Application be allowed as prayed.

Respondent's Submissions;

13. On the Respondent's part, his submissions are dated 25th April, 2025. Counsel for the Respondent submitted that the decree was issued on 25th April, 2024. That the instant Motion was filed on 22nd January, 2025, 9 months later and after execution had been completed by the OCS, Baharini Police Station, who ordered her to leave the land. Counsel argued that the Appellant has not explained the delay. Counsel also submitted that the Appellant had not tendered evidence of the substantial loss she might suffer.
14. Counsel concluded that the Appellant has not met the threshold for grant of stay of execution as set out under Order 42 Rule 6. Counsel relied on *Elena Doudoladova Korir vs Kenyatta University* (2014) eKLR, *Jaber Mohsen Ali & Another vs Priscillah Boit & Another* E&L No. 200 of 2012 (2014) eKLR and *James Wangalwa & Another vs Agnes Naliaka Cheseto* (2012) eKLR.

Analysis and Determination:

15. I have considered the application, the response thereto as well as the submissions of the parties and the applicable law. The main issues for determination are:-
 - i. Whether the court should extend the time for filing an appeal and thereby validate the instant appeal;
 - ii. Whether an order for stay of execution of the judgment/decreed of the trial court should issue.

a. Whether the court should extend the time for filing an appeal and thereby validate the instant appeal;

16. Commencing with the issue of whether to extend the time to file the Appeal, Section 95 *Civil Procedure Act* empowers the Court to enlarge such time as follows:-
 95. Enlargement of time
Where any period is fixed or granted by the Court for the doing of any act prescribed or allowed by this Act, the Court may, in its discretion, from time to time, enlarge such period, even though the period originally fixed or granted may have expired.
17. This being an appeal from a subordinate Court to the Environment and Land Court, it is further governed by the provisions of Section 79G of the *Civil Procedure Act* which provides that:

Every appeal from a Subordinate court to the High court shall be filed within a period of thirty days from the date of the decree or order appealed against, excluding from such period



any time which the lower court may certify as having been requisite for the preparation and delivery to the appellant of a copy of the decree or order.

Provided that an appeal may be admitted out of time if the appellant satisfies the court that he had a good and sufficient cause for not filing the appeal in time.

18. A court therefore has discretion to decide whether or not to extend the time within which to file an appeal. Like all discretionary remedies, it must be granted on sound legal basis and not on caprice or whims. The factors to be considered by a court before exercising its discretion to enlarge time to file an appeal are stated in *Paul Musili Wambua vs Attorney General & 2 Others* (2015) eKLR, where the court held that:-

(8) I have considered the rival submissions by both counsel, it is now well settled by a long line of authorities by this Court that the decision of whether or not to extend the time for filing an appeal the Judge exercises unfettered discretion. However, in the exercise of such discretion, the court must act upon reason(s) not based on whims or caprice. In general, the matters which a court takes into account in deciding whether to grant an extension of time are; the length of the delay, the reason for the delay, the chances of the appeal succeeding if the application is granted, the degree of prejudice to the respondent if the application is granted. (See *Mutiso vs Mwangi*) [1999] 2 EA 231. In other words, Rule 4 of the Court of Appeal Rules donates unfettered discretion and as long as the discretion is exercised judiciously, a single Judge would be entitled to consider any other relevant material.

19. The Appellant thus had the onus to;

- (i) explain the length and reason for the delay,
- (ii) demonstrate that the intended appeal has high chances of succeeding and
- (iii) establish that the Respondent will not be prejudiced if the extension is granted.

20. With regard to the period and reason for the delay, according to the Appellant, judgment in this matter was initially slated for delivery on 19th April, 2024 but was deferred to 23rd April, 2024. She deponed that her advocates enquired on the delivery of judgment and were informed that judgment would be delivered on 2nd May, 2024, but on that date, it was again not delivered and they were awaiting notice from the court on the date of delivery of judgment. These facts have not been denied by the Respondent.

21. The delay in filing the Appeal herein is thus attributed to failure by the Trial Court to issue and serve a notice of the date when it scheduled the delivery of the judgment upon the Appellant and/or her advocate. I have not seen the record of the trial court to confirm who was present on the date judgment was read, and there is no evidence that the Appellant was notified of the date of delivery of judgment especially after it had been deferred on two dates. All that I can see is that the judgment was signed and delivered on 25th April, 2024.

22. The Respondent has not denied that the Appellant was not issued with notice of delivery of the judgment. The Respondent only claimed that the Appellant ought to have known that judgment had been delivered since he served her advocates with his Bill of Costs in July, 2024. The Respondent did not exhibit any proof of the alleged service or the Bill of Costs allegedly filed. In any event, Service of a Bill of Costs is not the notice of judgment envisioned at Order 21 Rule 1, which the Respondent did not deny that it was not issued.



23. Accordingly, this court takes it that the Appellant only learnt about the judgment on 15th January, 2025 when she was informed by the OCS, Baharini Police Station. The applicant stated that when she learnt about the Judgment, she caused the Memorandum of Appeal to be filed on the 22nd January, 2025.
24. The Supreme Court in the case of Nyamboki vs Gathuru (Application 6 of 2019) (2019) KESC 44 (KLR) held as follows in determining an application seeking such extension:-

“... the Court has to consider whether the explanation given for any delay is reasonable and credible; whether there also exist extenuating circumstances to enable the Court exercise its unfettered jurisdiction; and that the delay, in any event, should not be so inordinate as to leave no doubt, that an applicant has been slothful, and filed such an application as an after-thought.”
25. I admit that there has been a long delay in bringing the instant Motion. However, the delay in my considered view is properly explained.
26. On whether the Appeal has any chances of success, the Appellant has attached a copy of the Memorandum of Appeal clearly stating her grounds of appeal from which I am able to gauge the merits thereof. Having perused it, I note that the Appellant faults the Trial Magistrate for among other issues making a finding that she had hatched a plan to grab the Respondent’s land, when no allegation of fraud had been pleaded. I have also had a look at the copy of the Plaintiff filed in the lower court and indeed, there was no allegation of fraud or grabbing of land. The Respondent’s only issue was the alleged invasion of the Appellant into his land.
27. It is the Respondent’s case that the parties herein are claiming two different parcels of land. Upon perusal of the judgment, I also notice that the Trial Magistrate did not explain how he reached the conclusion that the Appellant’s Plot No. 137 and the Respondent’s Plot No. Kapyemit/Block 20 Plot No. 104 are one and the same piece of land. The Appellant seeks a second opinion on this and other issues through this Appeal, which in my view are not frivolous and have high chances of success.
28. On prejudice to be suffered by the Respondent herein, none has been alleged by the Respondent and neither has he proved that he will suffer any prejudice. For this reason, the court finds that the prejudice, if any, that may befall the Respondent can be compensated through an award of costs.
29. In view of all the foregoing circumstances, the court is satisfied that it is in the best interests of justice to exercise its discretion in favour of the Appellant to extend the time for filing the appeal, thereby validating the instant Appeal.

b. Whether an order for stay of execution of the judgment/decreed of the trial court should issue;

30. At prayer (2) of the Application, the Appellant sought a stay of execution of the judgment of the trial court pending hearing and determination of this application in the first instance. At prayer (4) the Appellant again seeks a stay of execution pending the hearing and determination of the Application. It is therefore clear from the application that there is no prayer for a stay of execution pending appeal, even though the parties submitted ad though there was such a prayer. It is trite law that a court cannot grant relief beyond the scope of the pleadings. Indeed, that is admitted by the appellant in her submissions. I am therefore not bound to grant a prayer that has not been sought in the application. In any event, at paragraph 8 of his Replying Affidavit, the Respondent deponed that execution had already been finalised. Although the Appellant refuted this allegation, the applicant, infact alluded at paragraph 7 of her supporting affidavit that she was called by the Officer in-charge of Kapyemit Police Station who informed her that he had received the judgement from court requiring that the appellant hands over



vacant possession of the suit land. This, in my view, is an indication that execution may indeed have taken place. Even if execution has not been undertaken as alluded to by the appellant, there is no basis upon which the court can grant an order of stay of execution pending the intended appeal since the same has not been sought in the application.

Orders:

31. In the circumstances, the application dated 22nd January, 2025 is allowed in the following terms: -
 - a. The appeal herein is hereby admitted out of time and deemed to be duly filed and served within the stipulated statutory period, subject to the payment of the requisite court fees.
 - b. Costs of the application shall abide the outcome of the appeal.
32. Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY AT ELDORET ON THIS 25TH DAY OF SEPTEMBER, 2025 VIDE MICROSOFT TEAMS.

HON. C. K. YANO

ELC, JUDGE

In the presence of;

Mr. Mua Wambua holding brief for Mogambi for Appellant.

No appearance for Respondent.

Court Assistant - Laban.

