



**Njoroge v Royal Housing Co-operative Society Ltd & 2 others  
(Environment and Land Miscellaneous Application E049 of 2025)  
[2025] KEELC 6172 (KLR) (24 September 2025) (Ruling)**

Neutral citation: [2025] KEELC 6172 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS  
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E049 OF 2025  
NA MATHEKA, J  
SEPTEMBER 24, 2025**

**BETWEEN**

**PETER MUTAHI NJOROGE ..... APPELLANT**

**AND**

**ROYAL HOUSING CO-OPERATIVE SOCIETY LTD ..... 1<sup>ST</sup> RESPONDENT**

**THE CHAIRMAN ROYAL HOUSING CO-OPERATIVE SOCIETY  
LTD ..... 2<sup>ND</sup> RESPONDENT**

**THE SECRETARY ROYAL HOUSING CO-OPERATIVE SOCIETY  
LTD ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

1. The application is dated 19<sup>th</sup> May 2025 and is brought under Article 159 of the [Constitution](#) of Kenya, Section 1A, 1B, 3A, 22(b) & 79G of the [Civil Procedure Act](#), Section 81 of the [Co-operative Societies Act](#), Order 51 Rule 1, 3, 4, 10, 11,13 and 16 of the Civil Procedure Rules seeking the following orders;
  1. That this application be certified as extremely urgent, service be dispensed with and the same be heard inter-partes on priority basis.
  2. That the Honourable Court be pleased to order that this application be heard viva voce on the inter-partes hearing date to be set by Court.
  3. That the Honourable Court be pleased to grant leave to the Appellant to file the Memorandum of Appeal out of time.
  4. That the costs be provided in cause.



2. It is based on the following grounds that at all material times to this suit, the Appellant was a member of the 1<sup>st</sup> Respondent Sacco who worked hard and bought all that property known as House No. 64 situated at Royal/Razak/Progressive Estate Plot Number 2358/10. That the Respondents jointly and severally attempted to deprive the Appellant of his legal entitlement to the same thereby necessitating proceedings at the Co-operative Tribunal. That the Appellant through the then able counsels, filed and obtained injunctive orders against the Sacco which orders were issued on 2<sup>nd</sup> November, 2016. The matter was however dismissed on 16<sup>th</sup> December, 2021 for want of prosecution and this being the case, the Appellant approached the Tribunal vide the application dated 27<sup>th</sup> January, 2024 seeking among other orders, an order to set aside the dismissal orders and to reinstate the suit. That even before the said application and directions therewith could be served, the Respondent quickly demolished the suit property thereby prompting the Appellant's second application dated 2<sup>nd</sup> February, 2023 seeking fresh injunctive orders. That the Honourable Tribunal considered the second application and issued injunctive orders dated 3<sup>rd</sup> February, 2023 to wit, restraining the Respondents from alienating or disposing or dealing with the construction materials of all that property known as House No. 64 situated at Royal/Razak/Progressive Estate Plot Number 2358/10.
3. The said orders together with the application therewith were served upon the Respondents who deliberately disobeyed the injunctive orders thereby necessitating the third application for contempt dated 20<sup>th</sup> April, 2023. The Tribunal however deliberately lost sight of all the foregoing in its Ruling rendered on 3<sup>rd</sup> October, 2024 hence this application. Additionally, the Applicant had moved inadvertently wrongly moved to High Court Civil Division in Misc. Civil Application E1098 of 2024, however, the same was withdrawn with no orders as to costs hence this Application. That it is therefore in the interest of justice that this application be heard on priority basis so as to allow the Appellant prosecute the intended Appeal.
4. I have considered the Application and the supporting affidavit on record. The main issue for determination is whether this court should allow the Applicants to file the Appeal out of time.
5. The guiding provision on filing of Appeal is 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 good and sufficient cause for not filing the appeal in time.”
6. The Supreme court in the case of Nicholas Kiptoo Arap Korir Salat vs Independent Electoral and Boundaries Commission & 7 others (2014) eKLR stated as follows;

Extension of time being a creature of equity, one can only enjoy it if he acts equitably: he who seeks equity must do equity. Hence, one has to lay a basis that he was not at fault so as to let time to lapse. Extension of time is not a right of a litigant against a court, but a discretionary power of the courts which litigants have to lay a basis where they seek courts to grant it.”
7. On the second issue, stay of execution pending appeal is governed by the provisions of Order 42 Rule 6 of the Civil Procedure Rules which provides as follows:



- 6.(1) No appeal or second appeal shall operate as a stay of execution or proceedings under a decree or order appealed from except in so far as the court appealed from may order but, the court appealed from may for sufficient cause order stay of execution of such decree or order, and whether the application for such stay shall have been granted or refused by the court appealed from, the court to which such appeal is preferred shall be at liberty, on application being made, to consider such application and to make such order thereon as may to it seem just, and any person aggrieved by an order of stay made by the court from whose decision the appeal is preferred may apply to the appellate court to have such order set aside.
- (2) 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.”
8. For a stay of execution to be granted, an applicant must satisfy the conditions stated in Order 42 rule 6 (2) to the effect that:
- (a) the application for stay must be made without unreasonable delay from the date of the decree or order to be stayed;
  - (b) the applicant must show that he will suffer substantial loss if the orders of stay is not granted, and
  - (c) the applicant offers such security as the court may order to bind him to satisfy any ultimate orders the court may make binding upon him.
9. The essence of an application for stay pending appeal is to preserve the subject matter of litigation, to avoid a situation where a successful appellant only gets a paper judgment, while at the same time balancing the rights of the parties.
10. While taking into consideration the conditions above, the court will look into the conduct of the Applicant and whether he is coming to this court with clean hands. A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the court, the party must show good or sufficient cause why the orders sought should be extended.
11. The Applicant stated that the matter was however dismissed on 16<sup>th</sup> December, 2021 for want of prosecution. That they approached the Tribunal vide the application dated 27<sup>th</sup> January, 2024 seeking among other orders, an order to set aside the dismissal orders and to reinstate the suit. That even before the said application and directions therewith could be served, the Respondent quickly demolished the suit property thereby prompting the Appellant’s second application dated 2<sup>nd</sup> February, 2023 seeking fresh injunctive orders. That the Honourable Tribunal considered the second application and issued injunctive orders dated 3<sup>rd</sup> February, 2023. The said orders together with the application therewith were served upon the Respondents who deliberately disobeyed the injunctive orders thereby necessitating the third application for contempt dated 20<sup>th</sup> April, 2023. The Tribunal in its Ruling rendered on 3<sup>rd</sup> October, 2024 ruled against him hence this application. That the Applicant had moved inadvertently wrongly moved to High Court Civil Division in Misc. Civil Application E1098 of 2024, however, the same was withdrawn with no orders as to costs hence this Application.
12. I have perused the pleadings before me and find that the Applicant had moved inadvertently moved to High Court Civil Division in Misc. Civil Application E1098 of 2024, however, the same was



withdrawn with no orders as to costs hence this Application. That suit was filed on the 3<sup>rd</sup> December 2024 according to documentary evidence. The ruling sought to be appealed against was delivered on the 3<sup>rd</sup> October 2024 and this application is dated 19<sup>th</sup> May 2025. However, bearing in mind the suit filed in the High Court in 3<sup>rd</sup> December 2024, I find that the applicant is not guilty of inordinate delay in the circumstances. I also find that the annexed memorandum of appeal raises triable issues. I find this application is merited and I grant prayer 3 on condition that the appeal is filed and served within the next 30 days. Costs of the application to be in the cause.

It is so ordered.

**DELIVERED, DATED AND SIGNED AT MACHAKOS THIS 24<sup>TH</sup> DAY OF SEPTEMBER 2025.**

**N.A. MATHEKA**

**JUDGE**

