



**Mandera County Government v Sheikh (Civil Application
E134 of 2022) [2025] KECA 1654 (KLR) (9 October 2025) (Ruling)**

Neutral citation: [2025] KECA 1654 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPLICATION E134 OF 2022
PO KIAGE, JA
OCTOBER 9, 2025**

BETWEEN

MANDERA COUNTY GOVERNMENT APPLICANT

AND

ABDULLAH SHEIKH RESPONDENT

*(An appeal from the judgment of the Environment and Land Court at
Garissa (Cherono, J.) dated 27th November 2020 in ELC NO. 27 of 2018)*

RULING

1. This motion dated 19th April 2022 is yet another omnibus application seeking disparate orders tenable before different set ups of this Court and thus a candidate for striking out for incompetence. And that is not all: it does not cite a single provision of the Court of Appeal Rules. Instead, it purports to invoke Order 42 Rule 6(1) and Order 51 Rule 1 of the Civil Procedure Rules, which are wholly inapplicable as procedural or jurisdictional hooks for applications before this Court.
2. Although indicated for filing, and indeed is filed before this Court, the substantive prayers the motion seeks have undertones of prayers couched for the court below, a la cut-and-paste:
 2. That this honourable court be pleased to issue an order for a stay of execution of the judgment entered and delivered herein against the applicant on 27th November, 2020 until the hearing and final determination of this application.
 3. That this honourable court be pleased to grant the applicant leave to appeal out of time against the judgment delivered by Justice E. C. Cherono on the 27th November, 2020.” (My emphasis)
3. Now, before this Court prayer (2) is maintainable under Rule 5(2)(b) and must to be heard by the full Court by dint of Rule 55 (2) (b). In contrast prayer (3), based on Rule 4, is to be heard by a single



judge by reason of Rule 55(1). A motion that carries prayers grantable at once by a single judge and by the full Court is thus an embarrassing pleading that is at best a mongrel and a mule in procedural law, that ought to be sent packing.

4. But even were I, at my magnanimous best, to ignore the part of the motion that is not properly before me and treat the error as one curable by severance, any attempt at gracious decoupling of the prayers will not avail the applicant much. This is because all I see is a bland statement in ground 6 in support of the motion that;

6. The failure to file the Memorandum of Appeal within the prescribed time was not intentional but has been occasioned by delay from the lower court in furnishing the Applicant herein with certified copies of the judgment until to date. (sic)”

5. Such ground must be backed by evidence by way of averments under oath explaining why there was delay but, having perused the supporting affidavit of Adan Kullow sworn on 19th April 2022, there is not the slightest attempt to explain that delay. He who seeks the Court’s discretionary intervention must place material before the Court upon which the judge may act. Without material or other explanatory evidence, whether by a statement under oath or some document germane to the matter, the Court would be acting out of whim, caprice or sentiment to grant an application steeped in untenable, nay fatal, deficiency. A judge cannot engage in guess work, nor should he shoot in the dark. A party must satisfy the relevant principles and when no material is availed, such party’s pleas for discretionary favour must fail.
6. I have said enough to show that the motion before me in so far as it seeks enlargement of time is devoid of merit and it is accordingly dismissed.

DATED AND DELIVERED AT NAIROBI THIS 9TH DAY OF OCTOBER, 2025.

P. O. KIAGE

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JUDGE OF APPEAL

I certify that this is a true copy of the original.

Signed

DEPUTY REGISTRAR

