



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MALINDI

ELC CASE NO E020 OF 2025

REUBEN M. KIOKO/TA KIOKO

ENTEPRISES.....APPLICANT

VERSUS

1. PIETRO CANNOBIO T/A KILIFI COMPLEX CENTRE

2. JOEL TITUS MUSYA T/A MAKURI

AUCTIONEERS.....

.....RESPONDENTS

RULING

1. The application dated April 1, 2025, requested the following orders:

a) Spent.

- b) That this court be pleased to grant leave to the applicant to file an appeal out of time.**
- c) That this Court be pleased to grant a stay on the July 23, 2024, ruling and all related orders in Kilifi Misc. Land Application No. 14B of 2023, Reuben Kioko T/A Kioko Enterprises v Pietro Cannobio T/A Kilifi Complex Centre, pending this application's hearing and determination.**
- d) That this Court be pleased to grant orders for a stay of execution of the ruling delivered on July 23, 2024, and all consequential orders issued pursuant thereto in Kilifi Misc Land Application No 14B of 2023 Reuben Kioko T/A Kioko Enterprises v Pietro Cannobio T/A Kilifi Complex Centre, pending the hearing and determination of the intended appeal.**
- e) That the draft Memorandum of Appeal attached herein be deemed as duly filed upon payment of the required fees.**
- f) That the costs of this application be provided for.**

- 2.** The application was supported by the annexed affidavit of the applicant, Reuben M. Kioko, deposed on April 1, 2025.
- 3.** The 1st respondent opposed the application via a replying affidavit dated April 28, 2025.
- 4.** The court directed that the application be disposed of through written submissions. I acknowledge the submissions from Ms. Kagori and Mr. Kinaro, learned counsels for the applicants and the respondents, respectively, for which I am grateful. These submissions helped this court in reaching the verdict on the issues raised in the application.
- 5.** Arising from the materials and submissions presented before me, the issues I frame for the court's determination are whether to grant an extension of time to appeal, whether to grant a stay of execution of the orders being appealed, and who should bear the costs of this application.
- 6.** The impugned ruling was delivered by the trial court on July 23, 2024, electronically by sending the verdict to the email addresses of the parties' advocates on record. The said ruling dated July 23, 2024, dismissed the applicant's application dated May 17, 2023, for lack of jurisdiction by the trial court to

entertain and determine the application, as it was improperly filed before the trial court.

7. This was because the applicant failed to comply with **Section 14 of the Landlord and Tenant (Shops, Hotels, and Catering Establishments) Act, Cap 301**, Laws of Kenya, which requires that an order issued by the BPRT be adopted as a judgment or decree of the court for it to be enforceable as such.
8. The applicant's application, filed initially before this court as **Malindi ELC Miscellaneous Application No. E025 of 2023**, before being transferred to Kilifi Chief Magistrate's Court for hearing and determination, was filed before the BPRT order was adopted as a judgment or decree of the trial court, as required under **Section 14 of the Landlord and Tenant (Shops, Hotels, and Catering Establishments) Act, Cap 301 Laws of Kenya**.
9. The applicant did not appeal the ruling dated July 23, 2024. On July 26, 2024, the 1st respondent filed a party-and-party bill of costs before the Kilifi Chief Magistrate's Court stemming from the ruling of July 23, 2024. The applicant was served with the

bill of costs on July 26, 2024, and on September 27, 2024, the applicant filed his submissions opposing the bill.

10. The applicant argues that the previous advocate did not communicate the court's verdict until after execution arising from the taxed bill had begun.

11. On the other hand, the respondents argue that by September 27, 2024, when the applicant submitted his submissions on the respondent's bill of costs arising from the impugned ruling, he had not filed any appeal. Therefore, he was aware of the court's ruling but failed to appeal in time.

12. A court may grant an extension to file an appeal out of time if the applicant demonstrates good and sufficient cause for the delay, along with a reasonable explanation. Courts will evaluate factors such as the length of the delay, the reason behind it, the chances of success in the appeal, and any prejudice to the respondent. Applications for extensions are made at the court's discretion and are not guaranteed rights but rather an equitable remedy for a deserving party.

13. In the Supreme Court's decision (M.K. Ibrahim and S.C. Wanjala SCJJ) in **Nicholas Kiptoo Arap Korir Salat v**

Independent Electoral and Boundaries Commission and 7 others [2014] eKLR, it was held as follows:

“(1) Extension of time is not a right of a party. It is an equitable remedy that is only available to a deserving party at the discretion of the court.

(2) A party seeking an extension of time bears the burden of establishing a sufficient basis for the court’s satisfaction.

(3) Whether the court should exercise its discretion to extend time depends on the specifics of each case.

(4) There must be a reasonable cause for the delay, and the delay should be explained satisfactorily to the court.”.

14. There must be some material before the Court to allow its discretion to be exercised properly. See Odunga J. in **Dilpack Kenya Limited v William Muthama Kitonyi [2018] eKLR**, where the court observed that:

“In an application for extension of time, where the Court is being asked to exercise discretion, there must be some material before the Court to enable its discretion to be so exercised. Once there is non-compliance, the burden is upon the party seeking indulgence to satisfy the court why the discretion should nevertheless be exercised in his favor.”

ur, and the rule is that where there is no explanation, the re shall be no indulgence. See Ratman v Cumarasamy [1964] 3 All ER 933; Savill v Southend Health Authority [1995] 1 WLR 1254 at 1259."

15. Section 79(g) of the **Civil Procedure Act** states that an appeal from a Lower Court to the High Court must be filed within thirty days of the date of the decree. It states as follows:

"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."

16. In this case, the order being appealed against was issued on July 23, 2024. The appeal to this court should have been filed by August 23, 2024. The Memorandum of Appeal was filed on April 1, 2025, which is approximately 7 months late. The appellant was responsible for providing reasons for the delay. Regardless of how long it lasted, the delay must be justified.

17. Applicants argue that the verdict by the trial court was relayed to him late, well after execution had begun against him. Conversely, the respondent contends that as of September 27, 2024, when the applicant submitted his arguments on the respondent's bill of costs arising from the contested ruling, no appeal had been filed.

18. Based on the materials before me, the party and party bill of costs were assessed at Kshs 142,000, and a notice dated December 18, 2024, was served on the applicant's current advocates requesting payment of the estimated costs of Kshs 142,000.

19. The applicant, in an effort to avoid paying the assessed costs of Kshs 142,000, filed this appeal and application, claiming that his previous advocates did not inform him of the ruling dated July 23, 2024. It is therefore clear that the applicant, whose current advocates represented him, was fully aware of the dismissal of his application dated May 17, 2023, and the subsequent party and party bill of costs filed by the 1st respondent pursuant to the dismissal orders dated July 23, 2024.

20. The applicant has provided no plausible explanation for the failure to appeal within the legal timelines from July 23, 2024, to April 1, 2025, when this appeal and application were filed. There is no record from the applicant's former advocate indicating that they failed to inform him of the ruling dated July 23, 2024. Therefore, the applicant has not met the criteria for the court's discretion to extend time for filing an appeal beyond the statutory period. The claim that the applicant's former advocates failed to inform him of the ruling dated July 23, 2024, is unsubstantiated, as there is no evidence, such as correspondence, to support it.

21. Besides, the ruling dated July 23, 2024, enunciated that in enforcing a BPRT award, all the applicant needed to do was follow the proper procedure outlined in **Section 4 of the Landlord and Tenant (Shops, Hotels, Catering Establishments) Act, Cap 301**, Laws of Kenya. Recognizing his mistakes, the applicant changed course and filed **Kilifi Chief Magistrate Court Miscellaneous Application No. E001 of 2024, Reuben Kioko T/A Kioko Enterprises v Pietro Canobbio T/A Kilifi Complex**, where the BPRT order

from June 2023 was adopted as a decree of the Kilifi Chief Magistrate's Court. The applicant successfully applied for the execution of the decree. Njoroge J. delivered his ruling on April 2, 2025, in Malindi **ELC Misc E040 of 2024, Pietro Cannobbio v Reuben Kioko Enterprises**, involving the same parties and subject matter as the ruling of the **Mombasa BPRT case No. 23 of 2021**.

22. Therefore, no convincing reasons have been presented before this court to explain why no appeal was filed from the ruling of the Lower Court between July 23, 2024, and April 1, 2025. The claim that the previous advocate did not inform the client is incorrect. It appears to be an attempt to avoid settling the bill raised against the applicant for approaching the lower court unlawfully.

23. On the merits, there is nothing present to appeal to this court or request a stay. Additionally, the record clearly shows that the issues raised here have already been addressed in this court and through other means; the intended appeal will serve no purpose other than what appears to be an abuse of the court process.

24. Application dated April 1, 2025, is hereby dismissed with costs.

Dated, signed, and delivered virtually at Malindi on this 9th day of October, 2025.

E. K. MAKORI

JUDGE

In the presence of:

Ms. Kagori for the Applicant

Mr. Kinaro for the 1st Respondent

Happy: Court Assistant