



Kipteng & another v Paro (Environment and Land Appeal E018 of 2024) [2025] KEELC 6992 (KLR) (9 October 2025) (Ruling)

Neutral citation: [2025] KEELC 6992 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KILGORIS
ENVIRONMENT AND LAND APPEAL E018 OF 2024**

**MN MWANYALE, J
OCTOBER 9, 2025**

BETWEEN

MICHAEL LESAME KIPTENG 1ST APPELLANT

KENNETH KIPTENG 2ND APPELLANT

AND

ANTONY LETEIPA PARO RESPONDENT

RULING

1. Michael Lesame Kipteng and Kenneth Kipteng have moved the court vide their Notice of Motion application dated 17th of June 2025, primarily seeking the substantive order of leave to file an appeal out of time from the judgment and decree of Hon. W.C Waswa SRM dated 29th February 2024.
2. The said Applicants also seeks to be granted leave for their Advocate Messrs M/S Ochwangi & Co. Advocates to come on record in place of the previous Advocate Messrs Netaya Pion and Co. Advocates.
3. They further seek a stay of execution of the judgment and decree issued on 29th February 2024 together with all consequential orders particularly the eviction orders issued on 21.02.2025, pending hearing and determination of the Intended Appeal.
4. The above orders are sought on the strengths of the grounds in support of the application, being interalia; -
 - i. That there exists a judgment dated 29.02.2024 which the applicants were not aware of as their previous counsel did not inform them till they were served with an eviction dated 21st February 2025.
 - ii. The Applicants are aggrieved by the said decision, and are desirous of challenging the same vide an Appeal, hence this application for leave, and the Intended Appeal raises salient issues of law for the court to consider, and Respondents will not suffer any prejudice.



5. In support of the application is the supporting affidavit of Michael Kipteng, sworn with the authority of Kenneth Kipteng and has annexed interalia, an Agreement for sale dated 13.04.2002, photographs showing houses constructed on the parcel, a copy of a Memorandum of Appeal dated 15.07.2024, and/ another Memorandum of Appeal dated 17.07.2025 and the eviction order dated 21.02.2025.
6. Anthony Leteipa Paro the Respondent filed by both grounds of opposition and a Replying affidavit, the grounds of opposition were interalia; - that
 - i. The application did not capture and/or satisfy the requisite conditions under the provision of order 42 Rule 6 of the Civil Procedure Rules 2010.
 - ii. The application and the orders it seeks are contrary to Sections 24, 25, 26 and 27 of the Land Registration Act. No substantial loss whatsoever and/or howsoever, to warrant granting the orders of stay of execution the application has been brought under unreasonable delay, which has not been explained.
7. In the Replying affidavit the Respondent depones reiterates the history of the matter culminating to the Judgment delivered on 29.01.2024,
 - i. The that the Defendant chose to file an application for review, which application was dismissed on 05.07.2024, a copy of the ruling annexed as ALP 1, and thereafter filed a Memo of Appeal dated 15.07.2024 against the Judgment, delivered on 29.02.2024.
 - ii. The Applicants were aware of the outcome of the judgment, having initially filed a review application and the Memo of Appeal dated 15.07.2024, hence no reasons for the delay were advanced.
8. The court directed that the application be canvassed by way of written submissions which are summarized as herefollows: -

Applicant's Submissions

9. The Applicant submit that the mistake of their previous Advocate in filing an Appeal out of time should not be visited on them as innocent litigants and has cited two decisions to support their submission.

Respondent's Submission

10. The Respondent has framed and submitted on 3 issues for determination
On issue number 1, the Respondent submits that the Memo or Appeal filed on 15th July 2024 was filed out of time without leave of the court, hence there is no valid Appeal.
11. On issue 2 and 3, the Respondent submitted on them jointly that the Application did not meet the threshold of the Principles for extension of time as stated in the case of Nicholas Salat v IEBC 7 7 Others and the decision in the case of Paul Musili Wambua v Attorney General & 2 Others.
12. On the stay of execution, the Respondent submitted that the Application was not filed timeously and offended the provisions of Order 42 Rule 6 of the Civil Procedure Rules.
13. Before framing the issues for determination, the court makes note of the following undisputed fact in relation to this matter
 - i. The judgment of Hon. W.C Waswa sought to be challenged by way of the Intended Appeal was delivered on 29.02.2024.



- ii. An application for Review of the said judgment was filed and a Ruling thereof delivered on 5th July 2024.
 - iii. On 17th July 2024, a Memorandum of Appeal, was filed in respect of the judgment dated 29.02.2024, and simultaneously an application for stay of execution was filed, considered and a Ruling thereof dated 17.12.2024 was delivered.
 - iv. In the said Ruling dated 17.12.2024, the Memorandum of Appeal dated 17.07.2024 was found to have been filed contrary to section 79G of the *Civil Procedure Act*.
14. The instant application was filed in the same matter as the previously dismissed Application for stay and the struck out Memorandum of Appeal dated 17.07.2024 and not in a new cause as a Miscellaneous Application, seeking extension of time.

Issues for Determination

15. The court frames the following as issues for determination in this application
- i. Whether or not the application is merited.
 - ii. What reliefs ought to issue?
 - iii. Who bears the costs of the Application?
16. On issue number 1, the Applicants implore the court to grant them leave to file an appeal out of time, the grounds being that there was lack of communication from their previous Advocates prompting them to change instructions to the present Advocates who filed the instant application. This reason advanced by the Applicant if found factual will be a great determinant in the court's exercise of its discretion, as it forms the part of principles for extension of time as restated by the Supreme court in the case of *Nicholas Salat v IEBC & 7 Others* where the court held inter alia
- “The underlying principles a court should consider in exercise of such discretion should include
- a. Extension of time is not a right of any part. It is an equitable remedy that is only available to a deserving party; at the discretion of the court,
 - b. A part who seeks for extension of time has the burden of laying basis to the satisfaction of court
 - c. Whether the court should exercise the discretion to extend time, is a consideration to be made on a case-by-case basis
 - d. whether there is a reasonable reason for delay, the delay should be explained to the satisfaction of the court,
 - e. whether there will be any prejudice suffered by the respondent if extension is granted,
 - f. whether the application has been brought without delay.
17. The application herein was filed on 17.06.2025, whereas on 29.02.2024, therefore a delay of more than 15 months. That delay may not be inordinate but has it been sufficiently explained.



18. The reasons of non-communication by the previous advocate are not factual because the Applicants filed for a review before the trial court after judgment, hence they were aware of the outcome and the court finds the reasons advanced as merely red herring and that the Applicants are not candid with the court.
19. Having also found that the Applicant sought for Review of the judgment dated 29.02.2024 can the Applicant see to Appeal against the same judgment?
20. This issue was answered in the decision in the case of Martha Wambua v Irine Wanjiku Mwangi and Another, where the court quoted the decision in the case of Gerald Kithu Muchange v Catherine Muthoni Ngare and Another, where the court held “From the above positions of section 80 and order 45 of the Civil Procedure Rules, it is clear that one cannot exercise the right of appeal and at the same time apply for review of the said judgment decree. One must elect to file an appeal or to apply for review. It therefore follows that the Appellant herein had an unimpeded right to either appeal, against the ruling of 13.06.2014, or apply to have it reviewed, and having exercised the right to a review, she lost the right of appeal against the same order.”
21. It follows that the right of appeal that this application seeks enlargement of time was lost once the Applicant filed an application for Review and being the main relief, sought in the application, the Application lacks basis to stand and has no merits.
22. On what relief ought to issue, the application dated 17th of June 2024, having been found to be unmeritorious is hereby dismissed with costs to the Respondents.

DATED AT KILGORIS THIS 9TH DAY OF OCTOBER, 2025.

HON. M.N MWANYALE

JUDGE

In the presence of

CA – Emmanuel/Sylvia/Sandra

Mr. Ochwangi for the Applicant

Ms. Mireri for the Respondent

