



REPUBLIC OF KENYA



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**Ronoh v Kiplagat (Environment & Land Case E012 of 2024)  
[2025] KEELC 4442 (KLR) (12 June 2025) (Ruling)**

Neutral citation: [2025] KEELC 4442 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAROK  
ENVIRONMENT & LAND CASE E012 OF 2024  
LN GACHERU, J  
JUNE 12, 2025**

**BETWEEN**

**THOMAS KIMUTAI RONOH ..... APPLICANT**

**AND**

**JOHN KIPYEGON KIPLAGAT ..... RESPONDENT**

*(Application for leave to file an Appeal out of time from the Judgement and Decree of Hon. G.N. Wakabiu(CM) dated and delivered on 26th Day of October 2021 in NAROK CHIEF MAGISTRATES COURT ELCCMC NO.181 OF 2018)*

**RULING**

1. The Applicant herein Thomas Kimutai Ronoh, brought this Application dated 26<sup>th</sup> November 2024, wherein he has sought for the following Orders;
  - i). That the court do enlarge time and grant leave to the Applicant to file an appeal and/ or Memorandum of Appeal out of time, against the Judgment and Decree of Hon. G. N. Wakabiu( CM) dated and delivered on 26<sup>th</sup> October 2021, in Narok CMC ELC NO. 181 of 2018;
  - ii). That the court do stay the Judgment and Decree of Hon. G.N Wakabiu(CM) dated and delivered on 26<sup>th</sup> October 2021, in Narok CMC ELC NO. 181 Of 2018, together with all consequential orders arising therefrom pending the hearing and determination of the intended appeal;
  - iii). Costs of this Application be provided for.
  - iv). Any other orders that the court may deem just and expedient to grant.



2. The Application is supported by the grounds set out on the face of the Application, and the Supporting Affidavit of the Applicant herein THOMAS KIMUTAI RONO, sworn on 26<sup>th</sup> November 2024.
3. Among the grounds in support of the application are; the trial court delivered a judgement on 26<sup>th</sup> October 2021, wherein it directed the eviction of the Applicant out of land parcels No. Cis Mara/ Ololulunga/ 13957 and Cis Mara/ Ololunga/ 13958, which were previously Narok /Cis Mara/ Ololunga/ 1279; that the Applicant was aggrieved by the said Judgement, and intends to file an Appeal, and hence his application for leave to file Appeal out of time, and also stay of the said judgment; further, that due to the said Judgement, the Respondent is threatening to evict the Applicant, and thus the prayer for stay of the Judgment.
4. Further, that the Applicant did not file the Appeal on time due to financial constraints and/or hardship, and had been unwell for a long time. That the Applicant has a merited Appeal with high probability of success, and if the impugned judgement is not stayed, then he will suffer irreparable loss and grave prejudice which cannot be compensated with an award of damages.
5. In his Supporting Affidavit, the Applicant averred that he is indeed aggrieved by the Judgement of the trial court delivered on 26<sup>th</sup> October 2021, but he failed to appeal on the statutorily allowed time since he was unwell, and had children in school who were also unwell. He annexed TKR2, a letter from school to confirm that fact; He averred that due to the disposition and sickness, he encountered financial hardships and was unable to file the Appeal on time. It was his contention that his intended Appeal is merited, and has a high chance of success, and therefore time should be enlarged for him to file the Notice of Appeal and the Appeal itself; he urged the court to allow the Application.
6. The Application is opposed by the Respondent herein John Kipyegon Kiplagat vide a Replying Affidavit dated 18<sup>th</sup> February 2025, wherein the deponent averred that indeed the suit before the trial court was heard and judgement was delivered on 26<sup>th</sup> October 2021, in his favour.
7. Further, that though the Applicant was dissatisfied with the said judgement, he chose to file an application for Review of the said judgement as was evident from JKK2. It was his further averments that the said application was determined vide a ruling of 25<sup>th</sup> October 2022, wherein the said Application was dismissed.
8. The deponent further deposed that the applicant filed an Appeal against the dismissed Ruling vide Narok ELC Appeal No. E010 of 2021, which Appeal was determined on 24<sup>th</sup> January 2024, and the Appeal was dismissed. Therefore, it was his argument that the Applicant was actively following the matter from 2021, and it was not truthful that the delay of 4 years was due to the sickness of the Applicant or financial constraints.
9. Further, he averred that his advocate has advised him that the Applicant had an option of either appealing against the said judgement or seeking for review. That the Applicant chose for Review, and he cannot now seek to have a second bite at the cherry, since he cannot exercise both rights at the same time. Therefore, the inordinate delay has not been explained, and the instant application should be dismissed with costs to the Respondent.
10. This Application was canvassed through written submissions wherein the Applicant filed his written submissions dated 7<sup>th</sup> February 2025 through Cheruiyot Melly & Associates Advocates, and set out three issues for determination being;
  - i. whether the applicant has met the threshold for enlargement of time and leave to lodge an appeal out of time,



- ii. whether the applicant has met the threshold for grant of stay of execution pending appeal;
  - iii. who should bear costs of the application.
11. On the first issue, the Applicant relied on section 79 G of the *Civil Procedure Act*, and also relied on various decided cases being; *Thuita Mwangi vs Kenya Airways Ltd*( 2003) eklr; *Nicholas Kiptoo Arap Korir Salat vs IEBC & 7 Others*( 2014) eklr; where the Supreme Court set out the principles to be considered in an Application for Leave to Appeal out of time.
  12. On whether the Applicant has met the threshold for grant of stay of execution pending appeal, the applicant relied on Order 42 Rule 6(2) of the Civil Procedure Rules, and various decided cases such as; *Antoine Ndiaye vs African University* ( 2015) eklr; which set out the conditions to be fulfilled before an order of stay of execution can be issued; and also the case of *RWW vs EKW* ( 2019) Eklr, where the court set out the purposes of stay of execution pending appeal.
  13. Further reliance was placed in the cases of *Arun C, Sharma vs Ashana Raikundalia T/A Rairundalia & Co Advocates & 2 Others* ( 2014) eklr; and *Focin Motorcycle Co. Ltd vs Ann Wambui Wangui & Another* ( 2018) ekr; where the issue of security for due performance was discussed.
  14. On the issue of costs, it was submitted that the applicant merits to be awarded costs as the court has discretion to grant costs, which costs are granted to the successful litigant, and the applicant being one, should be awarded the costs herein.
  15. The Respondent filed his submissions dated 6<sup>th</sup> March 2025, through Okiro & Associates Advocates set out two issues for determination being; -
    - i. whether a litigant who pursued a review can also seek to pursue an appeal of the same judgment;
    - ii. whether the application to file appeal out of time was filed timorously.
  16. On the 1<sup>st</sup> issue, the Respondent relied on section 80 of the *Civil Procedure Act*; Order 45 Rule 1 Of the Civil Procedure Rules, and the case of *Ndithya vs Total Kenya Ltd* ( Misc Appli E218 of 2021(2022) KEHC 10080 (KLR)(14<sup>TH</sup> July 2022) ); where the court held that review remedy is only available to a party who has not appealed the decision of the court sought to be reviewed. It was argued that the Applicant wants to have a second bite at the cherry, by gambling with the law and judicial process.
  17. On whether the Application to file Appeal out of time was filed timorously, the Respondent relied on the decision of the Supreme Court in Civil Application No.3 of 2016: *County Executive of Kisumu vs County Government of Kisumu & 7 Others*, and submitted that the instant Application is an abuse of the process of Court, as it was filed late in the day, and therefore, the same must be dismissed with costs.
  18. It was also submitted that in the above Supreme Court’s decision, it was held that in an application for extension of time, the whole period of delay should be declared and explained satisfactorily to court, as extension of time is not a right, but is an equitable remedy that is available to deserving party at the discretion of the Court.
  19. This court has carefully considered the instant Application, the relevant provisions of law, the Affidavits in support and against the said application, the rival written submissions and cited authorities and finds as follows;
  20. There are two main prayers herein being an application for leave to file the Appeal out of time, by enlarging time, and Application for stay of execution of the Judgement pending the filing of the intended appeal. The court will deal with them sequentially.



**i. Application for leave to file an Appeal out of time.**

21. In an application for leave to file an Appeal out of time, the starting point is section 79G of the *Civil Procedure Act*. Ordinarily, every Appeal from the subordinate court should be filed within a period of thirty days from the date of the Decree appealed against. However, there are exceptions to this rule, and the court may grant Leave to file an Appeal out of time upon satisfaction of certain conditions.

22. The Law reads as follows; Section 79G of the *Civil Procedure Act* states: -

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 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.

23. Therefore, from the wording of section 79G of the *Civil Procedure Act*, before the court considers extension of time to file an appeal, the applicant must satisfy the court that that he/she has good and sufficient cause for filing the appeal out of time. This principle was well enunciated in the case of *Diplack Kenya Limited vs William Muthama Kitonyi* [2018]eKLR , wherein the court held that an applicant seeking enlargement of time to file an appeal out of time, or admission of an already filed appeal must show that he has a good cause for doing so.

24. Courts has variously determined this issue, and have set out principles to be considered. The Supreme Court in the case of *Nicholas Kiptoo Korir arap Salat vs IEBC and 7 Others* [2014] eKLR, elaborated on the principles applicable in an application for leave to appeal out of time. The court stated inter alia that:-

“The underlying principles a court should consider in exercise of such discretion should include:-

- a. Extension of time is not a right of any party. It is an equitable remedy that is only available to a deserving party at the discretion of the court;
- b. A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the 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 the delay. The delay should be explained to the satisfaction of the court;
- e. Whether there will be any prejudice suffered by the respondent if the extension is granted;
- f. Whether the application has been brought without undue delay.”



25. Similarly in the case of Paul Musili Wambua vs Attorney General & 2 Others [2015] eKLR, the Court of Appeal while considering an application for extension of time and leave to file the Notice of Appeal out of time held as follows:-

“.....it is now 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 whim or caprice. In general the matters which a court takes into account in deciding whether or not to grant an extension of time are; the length of 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.”

26. The court will apply the above principles in this case wherein the Judgement was delivered on 26<sup>th</sup> October 2021. Ordinarily the Appellant ought to have filed his Appeal by 26<sup>th</sup> November 2021, which evidently he did not file. He filed this Application on 26<sup>th</sup> November 2024, which is approximately 3 years after the statutory period of filing the Appeal.

27. The Applicant alleged that he did not file the Appeal on time because he was unwell and faced financial difficulties, and also had children who were in school at that time and were also unwell. He averred that the fact that he was unwell was a peculiar circumstance and sufficient cause or reasons to warrant the court grant leave to file an Appeal out of time.

28. The Application for extension of time is opposed by the Respondent, who denied that the Applicant was unwell to the extent of failing to instruct an advocate to file the Appeal on time. The Respondent averred that the Applicant did file an Application for Review of the Judgement, which application was heard and determined on 25<sup>th</sup> October 2022.

29. The Respondent also averred that the Applicant filed an Appeal against the Ruling on dismissal of the Application for Review, and the said Appeal was dismissed on 24<sup>th</sup> January 2024. The pleadings and determinations of the two were attached to the Replying Affidavit of the Respondent, and the Applicant did not controvert the same.

30. Indeed, it is not in doubt, that the Applicant did file an Application for Review of the Judgment of 26<sup>th</sup> October 2021, instead of filing an Appeal. He also filed an Appeal against the Ruling of 21<sup>st</sup> November 2022, which Appeal was also dismissed. The Applicant therefore was actively following the matter from 2021, and he cannot aver that he was unwell, and was going through financial difficulties.

31. Section 79G provides that upon the Appellant giving good and sufficient reasons or cause, the court may extend time upon which to file an Appeal. Therefore, to grant or not to grant extension of time or leave to file an Appeal out of time is at the discretion of the court. As usual, such discretion must be exercised judiciously. See the case of Mutiso v Mwangi [1997] KLR 630.

“It is now well settled that the decision whether or not to extend the time for appealing is essentially discretionary. It is also well settled that generally the matters which this court takes into account in deciding whether to grant an extension of time are; first, the length of delay; secondly, the reason for the delay; thirdly (possibly) the chances of appeal succeeding if the application is granted; and fourthly, the degree of prejudice to the Respondent of the application is granted.”



32. Further, the Supreme Court in the case of Nick Salat( supra) did hold that extension of time is not a right of a party, but an equitable remedy, that is only available to a deserving party. Is the Applicant herein a deserving party?
33. Firstly, the Applicant alleged that he was unable to file the Appeal on time because he was unwell and was going through financial difficulties. That could certainly not be true, because as soon as the Judgement was delivered on 26<sup>th</sup> October 2021, the Applicant instead of filing the Appeal, chose to file an Application dated 15<sup>th</sup> November 2021, for Review of the said Judgement.
34. By choosing to file the review, the Applicant ran out of the statutory period of 30 days to file the Appeal. As submitted by the Respondent while relying on the case of Ndithya vs Toata Kernya Ltd (supra), a review remedy was available to the applicant who though he had a right of appeal, did not Appeal, and a party cannot exercise both rights at the same time.
35. The Applicant herein is not truthful when he alleges that he was unwell, and experienced financial constraints, thus the delay in filing the Appeal. The Applicant ought to have disclosed that he had chosen the path of review, and failed to file the Appeal on time. Extension of time to file and Appeal out of time is an equitable remedy, which is granted at the discretion of the court, after good and sufficient reasons have been given to court by an Applicant.
36. However, the Applicant herein chose to hide the truth from the court, and averred that he was unwell, while all through from 2021, to 2024, he was actively involved in the matter. The applicant did not attach any documents or Medical reports to confirm that he was indeed unwell. Further, the letter from school is indicated as to whom it may concern, and is dated 6<sup>th</sup> February 2024, which letter was obtained after the Judgement of this court in the ELC Appeal No.E010 OF 2021.
37. Therefore, it is clear that the above letter is tailor made for this Application. There were no documents from the school to show that indeed the school had demanded the school fees arrears from the applicant, and what amount was the school fees arrears or balance. It is indeed evident that the applicant has attributed the delay in filing his appeal to financial constraints, and being unwell, but no evidence of such sickness has been availed. What delayed him was the filed of the Review Application.
38. It is trite law that financial constraint is not a valid reason for delay in filing an appeal on time, In the case of George Mwenda Muthuri vs Mama Day Nursery and Primary School Nyeri CA No. Nyr No. 4 of 2014 (UR2/14), a request for leave to extend time was declined because of inability to raise legal fees was held not to be a good reason for the delay.
39. Further, in the case of Willis Oneko Opiata vs Fredric Omondi Wera [2021] eKLR, the Court of Appeal dismissed an application for stay pending appeal where the applicant attributed the cause of delay to financial constraints. The court held as follows:-

“There was also mention of financial constraints whose details or proof were not also given. Finances were allegedly intended to hire an advocate to represent him in the intended appellate process. No mention was made as to why no attempts were made by him to initiate the appellate process in person in the manner the application under consideration was initiated.”
40. Having analysed the available evidence as above, the court finds and holds that no good or sufficient reasons have been given by the applicant for failure to file the Appeal on time. The Applicant has not laid the basis for the delay, and the delay has not been explained, and this court cannot exercise



its discretion in favour of the applicant, who was not truthful on the reasons for the delay. Thus, the Applicant herein is not deserving of the equitable remedy of extension of time.

**ii. Application for stay of execution of the Judgement of 26<sup>th</sup> October 2021 pending appeal.**

41. It is trite law that an Appeal does not operate as an automatic stay of execution. The conditions which a party must establish in order for the court to order stay of execution are provided for under Order 42 Rule 6(2) Civil Procedure Rules. Order 42 Rule 6 of the Civil Procedure Rules provides:-

“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 orders set aside.

42. Further, it is clear that no Order for stay of execution shall be made under sub rule 1 unless:-

- a. The Court is satisfied that substantial loss may result to the 1st 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.

43. However, Order 42 Rule 6(2) above comes into play where there is an Appeal pending or has been filed. The court has declined to grant the Applicant herein Leave to file appeal out of time and or enlarge time to file the Appeal. Therefore, there is no Appeal pending or an intended Appeal, and thus no reasons to grant Stay of execution.

44. On the issue of costs, the court finds that the same is granted at the discretion of the court. But ordinarily costs are granted to the successful litigant, unless there are reasons to depart from the same. The Respondent herein is the successful litigant is thus awarded costs of this Application.

45. Having carefully analysed the available evidence, the court finds and holds that the instant Application dated 26<sup>th</sup> November 2024, is not merited, and the same is dismissed entirely with costs to the Respondent herein.

It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAROK THIS 12<sup>TH</sup> DAY OF JUNE 2025.**

**L. GACHERU**

**JUDGE**

In the presence of:

Elijah Meyoki – Court Assistant

Mr. Kiprono for the Applicant

Mr. Okiro for the Respondent

**L. GACHERU**



**JUDGE**

**12/6/2025**

