



**Kinyua v Ringera & 6 others (Environment and Land Appeal
E054 of 2025) [2025] KEELC 7201 (KLR) (21 October 2025) (Ruling)**

Neutral citation: [2025] KEELC 7201 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT AND LAND APPEAL E054 OF 2025
BM EBOSO, J
OCTOBER 21, 2025**

BETWEEN

ISAAC KINYUA APPLICANT

AND

DAVID KIOGORA RINGERA 1ST RESPONDENT

STEPHEN NDUMBA RINGERA 2ND RESPONDENT

REUBEN MUGAMBI 3RD RESPONDENT

DUNCAN KOOME 4TH RESPONDENT

ZIPPORA KATHURE 5TH RESPONDENT

ROBERT MATANO 6TH RESPONDENT

SAMUEL KAMUGUA 7TH RESPONDENT

RULING

1. Falling for determination in this ruling is the notice of motion dated 3/4/2025 by Isaac Kinyua [the applicant]. Through it, the applicant seeks: [i] an order enlarging the time within which to lodge an appeal against the judgement of the Chief Magistrate Court at Meru [Hon T. M Mwangi] rendered on 4/2/2025 in Meru CMC E & L Case No. E019 of 2021; and [ii] an order staying execution of the said judgment.
2. The application is premised on the grounds outlined in the motion; in the applicant's affidavit dated 3/4/2025; and in the oral submissions tendered in court on 7/10/2025. The case of the applicant is that he instructed his former advocates to institute an appeal but the said advocates failed to do so despite several reminders. He adds that the delay was also occasioned by their new advocates' inability to access the lower court file for perusal.



3. The respondents opposed the application through a replying affidavit sworn on 1/10/2025 by David Ringera and oral submissions tendered in court on 7/10/2025. The case of the respondents is that judgment by the trial court was rendered on 4/2/2025. They argue that the mere allegation by the applicant that it was the mistake of his counsel is not a sufficient reason for granting an enlargement of time, adding that the applicant ought to have demonstrated what he did in pursuing the appeal. He states that the applicant has not demonstrated any formal complaint made to the Advocates Complaints Commission against their former advocates.
4. On the allegation that the lower court file was missing, the respondent argues that there is no evidence indicating that the lower court file was missing, adding that the case tracking system [the CTS] platform had sufficient information relating to the impugned judgment. Commenting on the applicant's letter to the court administrator, the respondent states that the said letter was written after expiry of the limitation period.
5. The respondent adds that the draft memorandum of appeal does not disclose arguable grounds of appeal. Lastly, on the plea for an order of stay of execution, the respondent states that the judgment of the trial court merely dismissed the applicant's suit and there is, therefore, nothing to stay in the said judgment.
6. The court has considered the application, the response to the application, and the parties' respective submissions. The court has also considered the relevant legal frameworks and the relevant jurisprudence. The following are the two issues that fall for determination in this ruling: [i] Whether the application meets the criteria for enlargement of time for lodging an appeal in this court; and [ii] Whether the application meets the criteria for granting an order of stay of execution pending disposal of an appeal by this court. I will be brief in my analysis and disposal of the two issues.
7. Does the application satisfy the criteria for enlargement of time? The limitation period for lodging an appeal before this court against judgments of lower courts is contained in Section 16A of the *Environment and Land Court Act* and Section 79G of the *Civil Procedure Act*. The frameworks in the two statutes provide for a limitation period of 30 days from the date of delivery of judgment. The two frameworks vest in this court discretionary jurisdiction to enlarge the limitation period. The legislated guiding principle in the two frameworks is that the discretionary jurisdiction should be exercised on the basis of good and sufficient cause.
8. The general jurisprudential principles that guide our courts whenever invited to exercise the above jurisdiction were outlined by the Supreme Court of Kenya in the case of Nicholas Kiptoo Arap Korir Salat v Independent electoral and Boundaries Commission & 7 Others [2014] eKLR as follows:
 1. Extension of time was not a right of a party. It was an equitable remedy that was only available to a deserving party at the discretion of the court;
 2. A party who sought extension of time had the burden of laying a basis for it to the satisfaction of the court;
 3. Whether the court ought to exercise the discretion to extend time, was a consideration to be made on a case to case basis;
 4. Whether there was a reasonable reason for the delay, which ought to be explained to the satisfaction of the court;
 5. Whether there would be any prejudice suffered by the respondents if the extension was granted;
 6. Whether the application had been brought without undue delay; and;



7. Whether in certain cases, like election petitions, public interest ought to be a consideration for extending time.”
9. In *Mukora Mwangi v Charles Gichina – Civil Application No. Nai 255 of 1997*, the Court of Appeal summed up the relevant principle as follows:

“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, in general, the matters which this court takes into account in deciding whether to grant an enlargement of time are: first, the length of the delay; secondly, the reason for the delay; thirdly [possibly], the chances of the appeal succeeding if the application is granted; and fourthly, the degree of prejudice to the respondent if the application is granted.”
10. The impugned judgment was rendered on 4/2/2025. The application for enlargement of time was filed on or about 3/4/2025. The applicant has explained that the 29 day delay was occasioned by his previous advocates’ failure to act on his instructions. He adds that when he decided to engage a new law firm, the new law firm encountered challenges in accessing the physical court file of the lower court which they wanted to peruse. The view of the court is that a 29 day delay is not inordinate. Secondly, the explanation appears plausible and has not been controverted.
11. The court has also examined the draft memorandum of appeal. The draft raises arguable issues. It has not been demonstrated that the issues are not arguable.
12. Lastly, the dispute in the suit giving rise to this application relates to the question of ownership of land. It has not been demonstrated that the respondent will be prejudiced if the applicant is allowed the opportunity to ventilate his appeal. The inconvenience which the respondents will be exposed to can be adequately indemnifiable through an award of costs of the present application, which are hereby assessed at Kshs 25,000/-.
13. Does the application meet the criteria for granting an order of stay of execution pending the hearing and disposal of an appeal by this court? The relevant criteria has been legislated under Order 42 rule 6 [2] of the Civil Procedure Rules which provides as follows:

“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.”
14. First what the trial court issued was a negative decree/order. Other than the award of costs, there is no order capable of execution in the judgment of the trial court. The prevailing jurisprudence is that a negative order/decreedoes not attract a stay order [See *Western College of Arts & Applied Sciences v Oranga & others* {1976} KLR 63].
15. Secondly, even if one were to proceed from the premise that the stay order is sought on account of the award of costs, no attempt was made by the applicant to satisfy the requirements of Order 42 rule 6[2] of the Civil Procedure Rules. Consequently, the plea for an order of stay of execution is declined.
16. In the end, the application dated 3/4/2025 partially succeeds in the following terms:



- a. The time for lodging an appeal against the judgment dated 4/2/2025 in Meru CMC E & L Case No. E019 of 2021 is hereby enlarged by 10 days from today.
- b. The plea for an order of stay of execution is rejected and dismissed for lack of merit.
- c. The applicant shall bear the respondents' costs of this application, assessed at Kshs 25,000/-, which shall be paid within 30 days. In default, the order granting enlargement of time shall stand vacated and any appeal filed shall stand struck out.
- d. For avoidance of doubt the appeal shall be lodged as a new cause.

DATED, SIGNED AND DELIVERED IN MERU THIS 21ST DAY OF OCTOBER, 2025

B M EBOSO [MR]

JUDGE

