



M’Mugungo & another v Mugambi (Environment and Land Miscellaneous Case E029 of 2025) [2025] KEELC 7190 (KLR) (21 October 2025) (Ruling)

Neutral citation: [2025] KEELC 7190 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT AND LAND MISCELLANEOUS CASE E029 OF 2025**

**BM EBOSO, J
OCTOBER 21, 2025**

BETWEEN

IBRAHIM MUTUMA M’MUGUONGO 1ST APPLICANT

STEPHEN KAARIA M’ANANUA 2ND APPLICANT

AND

STEPHEN MARANGU MUGAMBI RESPONDENT

RULING

1. Falling for determination in this ruling is the notice of motion dated 20/6/2025, brought by Ibrahim Mutuma M’Mugungo [1st applicant] and Stephen Kaaria M’Ananua [2nd applicant]. Through it, the duo seek: (i) an order enlarging the time for lodging an appeal against the judgment rendered on 24/4/2025 in Nkubu SPMC E & L Case No. E028 of 2023; (ii) an order staying execution of the said judgement; and (iii) an order deeming as a duly filed appeal, the draft memorandum of appeal annexed to the application as an exhibit.
2. The application was premised on the grounds outlined in the motion and in the supporting affidavit sworn by Ibrahim Mutuma M’Mugungo. It was canvassed through written submissions dated 5/9/2025, filed by M/s Kiautha Arithi & Co Advocates.
3. The case of the applicants is that they were defendants in Nkubu SPMC E & L Case No. E028 of 2023 in which judgment was rendered on 29/4/2025. They are aggrieved by the said judgment and they would like to lodge an appeal against it but the time for lodging the appeal has expired. They add that, they requested for certified copies of judgment and typed court proceedings on 24/4/2025, which was 4 days after delivery of the said judgment. They were supplied with the said copies on 19/6/2025, after the lapse of the 30 days limitation period. On requesting to be given a certificate of delay, they were advised that certificates of delay had been discontinued. The applicants contend that they have an arguable appeal and urge the court to grant them an extension of time.



4. On the plea for an order of stay of execution, they state that the trial court decreed cancellation of the registration of the 2nd applicant as proprietor of land parcel number Nkuene/Mitunguu-Kithino/2272 and issued a permanent injunction against them. It is their case that unless an order of stay of execution is issued, the intended appeal will be rendered nugatory. They add that no prejudice will be occasioned to the respondent.
5. The respondent opposed the application through a replying affidavit dated 9/9/2025. It is the respondent's case that the applicants did not bother to make a follow-up on their request for typed proceedings, adding that there is no evidence of the request for a certificate of delay. The respondent states that by the time the application was served on him, he had already extracted and lodged the decree with the Land Registrar, adding that it is not clear if the Land Registrar acted on the decree.
6. The respondent contends that the delay by the applicants is in bad faith and is intended to frustrate him and deny him the fruits of the judgment, adding that the 1st applicant is his step-brother who has sworn to frustrate execution of the decree as long as it takes. The respondent further states that the 2nd applicant is the Area Chief who bought the suit land while aware that he [the respondent] had settled on the land with his family.
7. The respondent faults the applicants for indolence and contends that the application is an afterthought and an abuse of the court process activated by malice. He contends that the applicants have not demonstrated that they have an arguable appeal. He urges the court to reject the application.
8. The court has considered the application, the response to the application and the submissions that were tendered on the application. 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 a first appellate court.
9. 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.
10. 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.”
11. 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.”
12. The impugned judgment was rendered on 24/4/2025. The 30 days limitation period lapsed on 24/5/2025, which was a Saturday. The last day for lodging the appeal was, therefore, 26/5/2025. The plea for enlargement of time was filed on 25/6/2025. There was, therefore, a delay of about 29 days, which in the view of the court, is not inordinate.
 13. The explanation tendered by the applicants is that they applied for certified copies of the judgment and typed proceedings for the purpose of an appeal but the same were not availed to them until 19/6/2025. The respondent does not consider this to be a valid reason. The court has considered the above explanation in the context of the utilities available through Court Tracking System (CTS) Platform. The court agrees with the respondent that the applicants had access to the judgment which was accessible to the public on the case tracking system. The judgment together with the applicants’ lawyer’s trial notes were sufficient for the purpose of preparing a memorandum of appeal. The contention that the applicants were waiting for certified copies of the judgment and the proceedings is a lame excuse. I reject it.
 14. On whether the applicants have an arguable appeal, the court has looked at the draft memorandum of appeal. The applicants contend that the trial court erred in finding that the 1st applicant held the suit land in trust for the respondent. There is nothing before court at this point to suggest that the above point is wholly hopeless.
 15. The respondent contends that he has been and he still is in possession of the suit land. He also contends that he lodged the decree of the trial court in the Land Registry and it may have been acted on. There is, however, no evidence of any prejudice which the respondent will suffer if the applicants are granted the opportunity to exercise their right of appeal in the present circumstances.
 16. Taking all the above into account, the court is of the view that notwithstanding the inadequacy of the explanation tendered by the applicants, the other relevant factors tilt in favour of granting an enlargement order. The respondent will be indemnified through an award of costs, which are hereby assessed at Kshs 25,000/-
 17. On whether the criteria for granting an order of stay of execution has been satisfied, the court takes the view that this is a question to be answered on the platform of a duly filed and valid appeal. At this point, there is no guarantee that the applicants will file the intended appeal. The court therefore directs that the plea for stay of execution be made in the appeal once the appeal is filed. The applicants/ appellants will be expected to furnish the court with a current certified copy of the land register or a current official search.



18. The applicants urged the court to deem their exhibited draft memorandum of appeal as duly filed. What was exhibited is a draft. Secondly, it is an exhibit. Thirdly, it was exhibited in a miscellaneous application. The miscellaneous application stands disposed on delivery of this ruling; it is not available as an appeal cause. A proper appeal ought to be filed as a fresh cause and be served.
19. For the above reasons, the application dated 20/6/2025 partially succeeds in the following terms:
 - a. The time for lodging an appeal against the judgment dated 24/4/2025 in Nkubu SPMC E & L Case No. E028 of 2023 is enlarged by 10 days from today. The appeal shall be lodged as a fresh cause.
 - b. The plea for an order of stay of execution is declined at this point without venturing into its merits and the applicants are directed to renew the plea in the intended appeal once the intended appeal is filed.
 - c. The applicants shall pay the respondents throw-away costs of Kshs. 25,000/- within 30 days from today. In default, the time-enlargement order shall stand vacated and any appeal filed pursuant to the order shall stand struck out with costs.

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

B M EBOSO [MR]

ELC JUDGE

