



**Nutralane Limited v Njana (Civil Appeal E389 of 2024)
[2025] KEHC 15488 (KLR) (Commercial and Tax) (30 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 15488 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL APPEAL E389 OF 2024
F GIKONYO, J
OCTOBER 30, 2025**

BETWEEN

NUTRALANE LIMITED APPLICANT

AND

BLAIZE NJANA RESPONDENT

RULING

Background

1. The appellant and the respondent have been embroiled in a landlord-tenancy dispute over rent arrears, following which the respondent instituted CMCC No. E716 of 2024.
2. On the other hand, the appellant filed Miscellaneous Civil Application No. E1238 of 2024; Paul Waithaka Githira T/A Ideal Auctioneers v Nutralane Limited & Blaize Njana Engouli.
3. The appellant initiated this appeal through a memorandum of appeal dated 23.12.2024 against the ex parte orders issued on 15.11.2024 by the Chief Magistrate's Court at Milimani in CMCC No. E716 of 2024.
4. The major ground of appeal is that the ex parte orders issued are in conflict with the orders issued in Miscellaneous Civil Application No. E1238 of 2024.

Application for enlargement of time and stay of proceedings

5. The appellant filed the notice of motion dated 21.2.2025, mainly under Order 42 Rule 6 of the Civil Procedure Rules, seeking: -
 1. Enlargement of time to file the appeal.



2. Admission of the memorandum of appeal dated 23.12.2024 and filed on 24.12.2024 as duly filed on time.
3. Stay of proceedings in Milimani MCOMMSU No. E716 of 2024; Blaize Njana v Nutralane Limited.
6. The application is supported by an affidavit sworn by the applicant's director, Albert Njuguna, on 21.2.2025 and written submissions dated 23.5.2025.
7. The applicant submitted that it has met the conditions for the grant of the orders sought. It relied on the following cases: -
 1. Nicholas Kiptoo Arap Korir Salat v The Independent Electoral and Boundaries Commission & 7 Others (Sup. Ct Application No. 16 of 2014) [2014] eKLR
 2. Njoroge v Kimani (Civil Application Nai E049 of 2022) [2022] KECA 1188 (KLR) (28 October 2022) (Ruling)
 3. Ndambuki & another (Suing as administrators to the
 4. Late Gregory Ndambuki) v National Land Commission & 2 others (Civil Application E092 of 2024) [2024] KECA 534 (KLR) (9 May 2024) (Ruling)
 5. William Odhiambo Ramogi & 2 Others v The Honourable Attorney General & 3 Others [2019] eKLR
 6. Access Bank Kenya PLC v Mengich & another (Civil Appeal E003 of 2024) [2024] KEHC 5682 (KLR) (22 May 2024) (Ruling)
8. In opposition to the application, the respondent filed the replying affidavit sworn on 23.3.2025 and written submissions dated 23.5.2025.
9. The respondent argued that the applicant has not met the thresholds for the grant of the orders sought. He relied on the following cases: -
 1. Ndungu v Mutua (Civil Appeal E047 of 2024) [2024] KEHC 6276 (KLR)
 2. Republic v Kenya Revenue Authority ex parte Yaya Towers Ltd [2008] eKLR
 3. Omega Enterprises (K) Ltd. v KTDC & Others (Civil Appeal No.59 of 1993)
 4. In the case of Samvir Trustee Limited v Guardian Bank Limited [2007] eKLR
 5. Nicholas Stephen Okaka & Another v Alfred Waga Wesonga [2022] eKLR
 6. chweya v Onyansi (2025) KEHC 14 (KLR)
 7. David Kiptum Korir v Kenya Commercial Bank & another [2021] eKLR

Analysis and Determination

10. The issue is whether the applicant has made a case for the orders sought.



Enlargement of time

11. Extension of time is an equitable remedy grantable at the discretion of the court. Inter alia; the delay in not filing the pleadings must be explained to the satisfaction of the court; whilst also considering the prejudice that will be suffered by the respondent.
12. See the Supreme Court in *Nicholas Kiptoo Arap Korir Salat v The Independent Electoral and Boundaries Commission & 7 Others* [supra] as follows: -

“ 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; A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the court Whether the court should exercise the discretion to extend time, is a consideration to be made on a case to case basis; Whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the Court; Whether there will be any prejudice suffered by the respondents if the extension is granted; Whether the application has been brought without undue delay; and Whether in certain cases, like election petitions, public interest should be a consideration for extending time.”
13. In the instant case, the impugned orders were issued on 15.11.2024. As per section 79 G of the *Civil Procedure Act*, the deadline for lodging the appeal was within 30 days, which fell on 15.12.2024. The appeal was lodged on 24.12.2024. This was about 8 days after the deadline. The court finds that the delay is not inordinate.
14. However, it is; “...plausible and satisfactory explanation for delay...that unlocks the court’s... discretionary favour.” *Andrew Kiplagat Chemaringo v Paul Kipkorir Kibet* [2018] eKLR
15. The applicant’s explanation for the delay is that the order was issued ex parte and that he lodged the appeal on 24.12.2024 as soon as possible after he learnt about the orders on 23.12.2024. The court finds this to be plausible explanation for the delay.
16. The respondent asserted that the applicant is not deserving of the court's discretion as it has not come to court with clean hands. He cited that the applicant violated his right to quiet enjoyment of the premises despite payment of rent. He also cited that the applicant unlawfully locked him out of the premises without notice in July 2024.
17. The respondent added that the applicant continued to demand rent arrears and penalties for July 2024 and deny him access to the premises despite payment.
18. The respondent indicated that the applicant filed an application dated 12.9.2024 claiming that he owed Kshs. 337,750/-. That through a ruling dated 27.9.2024 the court directed that the disputed amount be deposited in court.
19. The respondent faulted the applicant for filing Misc Appl 1238 of 2024 to get ex parte orders to auction his property. This was after he had disputed the disputed amount as directed and the court had issued a date for trial and directed him to take his belongings.
20. The respondent again faulted the applicant for proceeding with execution of the orders without following due process. He highlighted that the matter was dismissed thereafter as the applicant failed to prosecute it.
21. The respondent faulted the applicant for relying on an unsigned consent. He argued that the Kshs. 650,000/- costs prayed for as incidental to the recovery is unfair.



22. Be that as it may, in my considered view, these are issues for consideration in the appeal.
23. The court has held that “...an arguable appeal must not necessarily succeed, but one which ought to be argued fully before the court; one that is not frivolous. In addition, one ground of appeal can sufficiently fulfill this condition.” Stanley Kang’ethe Kinyanjui v Tony Ketter & 5 Others [2013] eKLR
24. The applicant asserted that its appeal raises serious and arguable points of law and fact, including that the said orders of 31.10.2024 are subsisting while the impugned orders of 15.11.2024 were granted.
25. On the other hand, the respondent contended that the appeal is devoid of merit, raises no arguable points of law or fact, and is an abuse of the court process.
26. Upon perusal of the memorandum of appeal, I am satisfied that the appeal is not frivolous.
27. As to prejudice, the applicant submitted that it will be prejudiced if the leave is withheld. It contended that the respondent would not suffer undue prejudice if the application is allowed, and that in any event, he can be compensated by an award of costs.
28. It is my considered view that the applicant is entitled to the right to pursue an appeal and will be prejudiced if leave to appeal out of time is not granted. On the other hand, the respondent will be afforded an opportunity to be heard in the appeal. What’s more, any prejudice the respondent would face, will be ameliorated through costs.
29. From the above, the court is satisfied that the applicant has met the threshold for the grant of orders (1) and (2) above.

Stay of proceedings pending appeal

30. The principles for consideration in determining whether to issue a stay of proceedings are well settled. They were restated by the court in Lucy Waithera Kimanga & 2 others v John Waiganjo Gichuri [2015] KEHC 6120 (KLR) as follows: -
 - a. The decision whether or not to grant a stay of proceedings or further proceedings on a decree or order appealed from is a matter of judicial discretion to be exercised in the interest of Justice.
 - b. The sole question is whether it is in the interest of justice to order a stay of proceedings and if it is, on what terms it should be granted.
 - c. In deciding whether to order a stay, the court should essentially weigh the pros and cons of granting or not granting the order.
 - d. In considering those matters, it should bear in mind such factors as the need for expeditious disposal of cases, the prima facie merits of the intended appeal, in the sense of not whether it will probably succeed or not but whether it is an arguable one, the scarcity and optimum utilization of judicial time and whether the application has been brought expeditiously.” See also William Odhiambo Ramogi & 2 Others v The Honourable Attorney General & 3 Others [2019] eKLR
31. The discretion also ought to be exercised sparingly and only in exceptional cases. See Halsbury’s Law of England, 4th Edn. Vo. 37



32. The court has already found that the appeal is arguable and that the application has been made without inordinate delay.
33. Therefore, the question for determination is whether there are exceptional circumstances warranting a stay of proceedings pending the appeal?
34. The applicant argued that it is at risk of irreparable prejudice should the case proceed in parallel with the pending appeal. That a piecemeal approach to resolving the issues would not only burden the parties but also lead to a potential duplication of proceedings and conflicting outcomes. That it is in the interest of justice to await the resolution of the appeal before proceeding further.
35. Conversely, the respondent argued that the applicant has not demonstrated any substantial loss or prejudice that he stands to suffer if the hearing proceeds and the courts makes its final judgment.
36. This is an interlocutory appeal. The applicant should show the interlocutory appeal will be rendered nugatory if the hearing of the case proceeds. The applicant has not established any specific prejudice that will ensue if the proceedings are not stopped.

Conclusion and Disposal

37. The applicant has explained to the satisfaction of the court that the delay in not filing appeal in time is not inordinate. He deserves an order for extension of time.
38. However, it has not been shown that the proceedings herein should be stayed in the interest of justice.
39. In the upshot, the application dated 21.2.2025 is partially successful. The court issues the following orders: -
 1. The memorandum of appeal dated 23.12.2024 and filed on 24.12.2024 is admitted as duly filed on time.
 2. Costs are awarded to the respondent.

DATED, SIGNED AND DELIVERED THROUGH MICROSOFT TEAMS ONLINE APPLICATION THIS 30TH DAY OF OCTOBER, 2025.

F. GIKONYO M

JUDGE

In the presence of:

Ms. Kilima for Respondent

Ms. Mwongera for Gitonga for Appellant

CA Kinyua

