



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT THIKA

ELCL MISC. APPL. NO. E041 OF 2024

**VERONICA NJOKI GATHURU.....1ST
APPLICANT**

**PETER KAGO KAMAU.....2ND
APPLICANT**

**PAUL NJOROGE KAGO.....3RD
APPLICANT**

VERSUS

**JANE WANJIRU KOMU.....1ST
RESPONDENT**

**PETER KOMU NGANGA.....2ND
RESPONDENT**

**THE DISTRICT LAND REGISTRAR, KIAMBU.....3RD
RESPONDENT**

**THE HON. ATTORNEY GENERAL.....4TH
RESPONDENT**

RULING

- 1) The Application before me is the Notice of Motion dated 4/07/2024 brought under Rule 79 (G) and 95 of the Civil Procedure Act and Order 50 Rule 5 of the Civil Procedure Rules. The Applicant is seeking the following orders:

1. THAT the proposed Appellant be granted leave to appeal out of time against the whole Judgment of the Hon. P. Muholi in the Senior Principal Magistrate's Court at **Githunguri Environment and Land Court Case No. 11 of 2020** delivered on 8th February 2024.
 2. THAT the Honorable Court be pleased to grant stay of execution of the Judgment delivered by Hon P. Muholi in the Senior Principal Magistrate's Court at **Githunguri Environment and Land Court Case No. 11 of 2020** on 8th February 2024 pending the Hearing and Determination of this Appeal.
 3. THAT the Notice of Appeal and Memorandum of Appeal annexed hereto and marked **AKG 1** and **AKG 2** be deemed duly filed and served.
 4. THAT the cost of this application be provided for.
- 2) The application is supported by the Affidavit of the Applicant and grounds apparent on the face of the application.
 - 3) The application was opposed by the 1st Respondent who filed a Replying Affidavit opposing the said application and sworn on 12/09/2024 and stated that the impugned Judgment before the lower Court was delivered on 08/02/2024 and the Applicant/Appellant was aware of the Judgment. Further that the Applicant is aware that for one to file an Appeal they do

not need certified copies of the proceedings and the Judgment.

- 4) The 2nd to 4th Respondents did not file any response nor submissions to the application.
- 5) It is the averment of the Respondent that after the Judgment was delivered, no action was taken either to review or set aside and/or appeal the same. Further the Respondent contends that the delay has not been explained as the Applicant sat on their laurels since the Applicant received the typed proceedings and Judgment on 13/03/2024 and it took another three (3) months and 21 days to file the Appeal.
- 6) It is the Respondent's averment that the Supporting Affidavit was sworn by Counsel for the Applicant and that the issues deponed by the Advocate in the Affidavit are inadmissible and that the application and the Affidavit should be struck out.
- 7) The application was canvassed by way of written submissions. The Applicant filed their submissions dated 12/05/2025 and the 1st Respondent filed theirs dated 12/09/2025 which I have considered in writing this Ruling.

Analysis and Determination

- 8) The Applicant in this application is seeking a substantive order of stay pending appeal and leave to appeal against the Judgment of the lower Court delivered on 8/02/2024. This application was filed on 4/07/2024, almost four months after

the delivery of Judgment. It is an undoubted right of a party who is aggrieved from a decision to appeal to the Appellate Court. The Applicant has explained that the reason for his delay is due to delay from receiving the certified copies of the proceedings from the lower Court and Judgment.

9) I do find a period of three months and 21 days to be inordinate and the reasons given for the delay not convincing. However, the Court's discretion cannot take away the undoubted right of a litigant to appeal if the delay, can be compensated by an award of costs. I have noted that the Applicant has annexed a copy of Memorandum of Appeal to his Supporting Affidavit. As already stated, he has taken other step(s) such as applying for certified copies of proceedings and the impugned Judgment as part of the preparatory process of lodging the appeal.

10) In an application for stay pending appeal, an Applicant must comply with Order 42 Rule 6 (2) of the Civil Procedure Rules which provides as follows:

"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 Applicant unless the order is made and

(b) That the application has been made without unreasonable delay; and

(c) 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.”

11) The Applicant has not given security for due performance of the decree and/or order that may ultimately be binding on him. They have not also given any undertaking to abide by such terms and conditions as may ultimately be binding on him. Having made my analysis as hereinabove and considering that the Respondent has also not stated what prejudice they stand to suffer if the leave and stay are granted, I reluctantly allow the application in the following terms:

- i. The Notice of Appeal and Memorandum of Appeal annexed hereto and marked AKG 1 and AKG 2 are deemed as duly filed and served.***
- ii. The Applicant is granted a stay of execution pending the hearing of the Appeal.***
- iii. The Applicant shall deposit a sum of Ksh. 100,000/= in a joint interest earning account in the names of his Lawyers and that of the Respondent as security for costs and other incidentals thereto within 30 days from today.***

- iv. Failure to fulfill order (iii) in 30 days will lead to automatic lapse of prayer (ii) above.**
- v. The costs of this application shall be borne by the Applicant.**

DATED, SIGNED AND DELIVERED AT THIKA THROUGH MICROSOFT TEAMS ON THIS 4TH DAY OF NOVEMBER, 2025.

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**MOGENI J
JUDGE**

In the presence of:-

Mr. Gachoka for the 1st, 2nd and 3rd Plaintiffs/Applicants

Ms. Kerubo holding brief for Mr. Wainaina for the 1st Defendant/Respondent

2nd, 3rd and 4th Defendants/Respondents - Absent

Mr. Melita - Court Assistant

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**MOGENI J
JUDGE**