



REPUBLIC OF KENYA



KENYA LAW
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**Kigwe v Kirori (Environment and Land Appeal E055 of 2025)
[2025] KEELC 7926 (KLR) (13 November 2025) (Ruling)**

Neutral citation: [2025] KEELC 7926 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT AND LAND APPEAL E055 OF 2025
JM ONYANGO, J
NOVEMBER 13, 2025**

BETWEEN

CHRISTOPHER KANGETHE KIGWE APPELLANT

AND

ANNE NYAMBURA KIRORI RESPONDENT

RULING

1. This ruling is in respect of the Appellant / Applicant’s Notice of Motion dated 17th August 2023 initially filed in the High Court at Kiambu before it was transferred to Thika High Court and eventually to this court. The application seeks the following orders:
 - a. Spent
 - b. Spent
 - c. Spent
 - d. Spent
 - e. The Honourable Court be Pleased to issue an order for extension of time to file and serve an Appeal against the Ruling and Order of Hon. S. Atambo delivered at Thika on 18th October 2022 in Thika CMELC Case No. 72 of 2008 Anne Nyambura Kirori v Christopher Kangethe Kigwe.
 - f. The Appeal filed by the Applicant herein be deemed as properly filed.
 - g. Pending the hearing and final determination of the pending Appeal, there be a stay of the Ruling and Order of Hon. S. Atambo delivered at Thika on 18th October 2022 in Thika CMELC Case No 72of 2008.



- h. Pending the hearing and final determination of the pending appeal, there be a stay of further proceedings in Thika CMELC Case No. 72 of 2008.
 - i. Such orders be made as are just and expedient in the interest of justice.
 - j. Costs of this application be provided for.
2. The application is premised on the 16 grounds set out on the face of the Notice of Motion which are amplified in the Applicant's Supporting Affidavit sworn on 17th August 2023.
 3. In the said affidavit he avers that on 18th October 2022 parties were notified that a copy of the ruling in Thika CMELC Case No. 72 of 20008 would be delivered via email but despite several requests by his advocate, the same was not delivered until 17th March 2023. This was followed by a request for a certified copy of the order and proceedings which were made available on 29th June 2023 long after the 30- day period for filing an appeal had lapsed.
 4. In the said ruling the court directed the Court Registrar to transfer documents for the property known as L.R Number 10823/5 situate South West of Thika Municipality registered as Number 20695/1 in compliance with the decree issued therein. It is his assertion that the said order was directed at an officer who does not exist in the subordinate court and the said order sought to endorse an illegality as the Applicant claims that he purchased only 20 acres yet the order directs the transfer of 939 acres.
 5. The Applicant states that he was aggrieved by the said ruling and he has filed the instant appeal which he fears will be rendered nugatory if the order of stay pending appeal is not granted. He adds that the appeal raises weighty triable issues as elaborated in the annexed Memorandum of Appeal and that it has high chances of success.
 6. The applicant avers that if the orders sought are not granted, the Ruling may be executed thus subjecting him to substantial loss as he will be unable to recover the suit property in the event the Appeal is allowed.
 7. He points out that the application was filed timeously and that he is willing to furnish such security as the court may direct.
 8. The application was strenuously opposed by the Respondent through her Replying Affidavit sworn on 5th October 2023. In the said affidavit she avers that she is the purchaser of a parcel of land known as L.R No. 10823/5912 measuring approximately ten decimal five three Hectares (10.53Ha) or thereabouts or twenty six acres (26acres) which is a sub-division of land parcel number 10823/5 measuring approximately three hundred and eighty Hectares (380Ha) or nine hundred and thirty nine (939 acres) from which her portion was to be hived off as per the sale agreement dated 5th April 2006.
 9. She clarified that the suit property which was the subject matter of Thika MCELN No. 72 of 2008 and also the subject of this application is the property known as L.R No. 10823/5912 hived off from land parcel No. 10823/5 which measures approximately 26 acres and not 939 acres as alleged by the Applicant.
 10. She denies ever having laid claim to the entire property registered as L.R No. 10823/5 measuring 939 acres as her claim in Thika CMELC No. 72 of 2008 is merely for L.R No. 10823/5912 measuring 26 acres which is valued at Kshs .18 million and not Kshs. 900million as alleged by the Applicant and the same is therefore within the pecuniary jurisdiction of the Chief Magistrate.



11. She deposes that the court had issued orders on 28th April 2009 pursuant to the decision in Ruiru District Land Tribunal which ordered the Applicant to transfer the suit property being land parcel No. 10823/5 in her favour.
12. It is her further deposition that the Applicant did not challenge the decision of the Land Disputes Tribunal or the validity of the order issued by the court on 28.4.2009 and the resulting Decree and he is therefore estopped from challenging the proceedings that resulted in the issuance of the court order. She adds that the application in MCELC No. 72 of 2008 was filed to enforce the Decree and seek an order for the Court Registrar to execute the transfer of the suit property as she had already initiated the sub-division process in accordance with the terms of the sale agreement dated 5th April 2006.
13. She asserts that the application to enforce the Decree dated 28.4.2009 was filed on 21.3.2021, a period of eleven years and three months after the Decree was issued by Ruiru Land Disputes Tribunal, which is less than the 12 years stipulated in the *Limitation of Actions Act*.
14. She depones that the delay in executing the Decree was due to the Applicant's lack of cooperation in failing to sub-divide the land as directed by the court hence the need to file the application dated 29.3.2021 for the court Registrar to execute the necessary forms to transfer the property in her favour.
15. The Respondent avers that the application dated 29.3.21 was allowed by the Chief Magistrate on 18.10.2021 when the court ordered the Court's Registrar to execute the Transfer documents to facilitate the transfer of the suit property L.R No 10823/5912 in favour of the Respondent.
16. She avers that after obtaining the ruling of the court she proceeded to have the suit property transferred in her favour and she was issued with a Certificate of title thus the orders sought by the Applicant have been overtaken by events.
17. She terms the Applicant's averment that he was only able to obtain a copy of the ruling in CMELC No. 72 of 2008 on 20.3.2023 as untrue as she was able to obtain the said ruling 5 months before March 2023.
18. It is her contention that the Applicant has not sufficiently explained the delay in filing her appeal. Further that the Applicant has not been candid in disclosing material facts including the acreage of the suit property.
19. She maintains that the application is unenforceable as the suit property L.R No. 10823/5912 measuring 26 acres has already been transferred to the Respondent. It is her further contention that the Applicant has failed to demonstrate that she ought to be allowed to file her appeal out of time.
20. She avers that she has been in possession of the suit property for a period of 17 years with the full knowledge of the Applicant and he should not be allowed to violate her constitutional rights.
21. In response to the Respondent's Replying Affidavit, the Applicant filed a Further Affidavit sworn on 6th December 2024 in which he averred that in her application dated 29.3.21, the Respondent laid claim to L.R No. 10823/5. That given that the said parcel measures 939 acres and is valued at Kshs. 900 million, the court lacked jurisdiction to hear and determine the application.
22. He pointed out that the order extracted from the application dated 29.3.21 does not align with the prayers sought in the application thus raising serious questions about the validity of the said court order.
23. He averred that Kigwe Limited had lost 26 acres to the Respondent who was undeserving of the same as the property was neither sold nor sub-divided to her by the registered owner, Kigwe limited.



24. It was his deposition that given the weighty matters of both fact and law raised in the appeal, the same ought to be heard on its merits.
25. He reiterated that the delay in filing the appeal was occasioned by the delay in obtaining a copy of the ruling a certified copy of the court order. Which had not been obtained by 1st November 2022 as per the annexure to the Replying Affidavit marked ANK 5.
26. He averred that upon receiving the ruling and decree of the lower court, he acted promptly by filing the application date 17.8.23 seeking to regularize the appeal.
27. He was of the view that it was in the interest of justice to allow the application and deem the appeal as duly filed and stay the proceedings in Thika MELC no. 72 of 2008 pending the hearing and determination of the appeal.
28. The application was canvassed by way of written submissions
29. In his submissions dated 12th February 2025, learned counsel for the Applicant submitted that the Applicant had sufficiently explained the delay as the ruling and certified copy of the proceedings were not availed in time. Counsel relied on the case of Andrew Kiplagat Chemaringo v Paul Kipkorir Kibet (2018) eKLR for the proposition that a satisfactory explanation for the delay is the key that unlocks the court's discretionary favour.
30. It was counsel's further submission that the appeal was arguable as the court lacked jurisdiction to entertain a matter whose value was over Kshs. 20 million. Further the trial court failed to find that the application was res judicata as the matter had already been determined by the Ruiru land Disputes Tribunal on 10.12.2008 and the application was filed more than 12 years after the Tribunal rendered its decision.
31. Furthermore, the extracted orders do not align with the application hence the rightful owner of the subject property had lost 26 acres to the Respondent despite the fact that the property was not sold to her. It was therefore his submission that the issues raised in the Memorandum of Appeal warranted a determination by the court.
32. Counsel submitted that the Applicant would suffer prejudice of the application was not allowed as the Applicant had lost 26 acres to the Respondent. And there was a real risk that the said parcel may be transferred to third parties if a stay is not granted which would result to irreparable loss on the part of the Applicant.
33. Counsel added that the application had been filed without undue delay and that the applicant was willing to abide by any condition as to security that the court may impose.

Analysis And Determination

34. Having considered the application, the Replying and Further Affidavits as well as the rival submissions, the main issues for determination are whether the Applicant should be granted leave to appeal out of time and whether a stay of execution should be granted.
35. The principles that guide the court in the exercise of its discretion to extend time for filing an appeal out of time were laid down by the Supreme Court in the case of Nicholas Kiptoo Arap Salat v IEBC & 7 Others (2014) eKLR, as follows:

“... it is clear that the discretion to extend time is indeed unfettered. It is incumbent upon the applicant to explain the reasons for delay in making the application for extension and



whether there are any extenuating circumstances that can enable the Court to exercise its discretion in favour of the applicant.

“... we derive the following as the underlying principles that a Court should consider in exercising such discretion:

1. 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;
2. a party who seeks extension of time has the burden of laying a basis, to the satisfaction of the Court;
3. whether the Court should exercise the discretion to extend time, is a consideration to be made on a case- to- case basis;
4. where there is a reasonable [cause] for the delay, [the same should be expressed] to the satisfaction of the Court;
5. whether there will be any prejudice suffered by the respondents, if extension is granted;
6. whether the application has been brought without undue delay; and
7. whether in certain cases, like election petitions, public interest should be a consideration for extending time” [emphasis supplied]

36. In an application for extension of time, the Applicant must explain the delay in filing the appeal to the satisfaction of the court. In the instant case, it is clear that a certified copy of the ruling and proceedings were not availed before the expiry of 30 days hence the delay has been satisfactorily explained.
37. Furthermore, the appeal raises serious issues regarding the court’s jurisdiction as well as the question of res judicata and limitation of actions which the court ought to consider.
38. Regarding the prayer for stay of execution, I am satisfied that the applicant has met the conditions laid down in Order 42 Rule 6 of the Civil Procedure Rules.
39. As I have already pointed out, the delay in filing the application has been sufficiently explained. The applicant had demonstrated that he stands to suffer substantial loss if a stay is not granted given the discrepancy between the orders sought and the orders extracted by the Respondent. The likelihood of the 26 acres that were excised from the Applicant’s land being transferred to third parties is real and this may occasion substantial loss to the Applicant.
40. Lastly, the Applicant has expressed his willingness to provide such security as the court may order.
41. Taking all factors into consideration, I am satisfied that the application is merited and I grant it and make the following orders:
 - a. The applicant is granted leave to appeal out of time and the appeal herein is deemed as having been properly filed.
 - b. A stay of execution of the Ruling and Order of Hon. S. Atambo delivered at Thika on 18th October 2022 in Thika CMELC Case No 72 of 2008 is hereby granted pending the hearing and determination of the appeal.
 - c. The proceedings in Thika CMELC Case No. 72 of 2008 are hereby stayed pending the hearing and final determination of the appeal.



d. The costs of this application shall abide the appeal.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 13TH DAY OF NOVEMBER 2025.

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J. M ONYANGO

JUDGE

In the presence of:

Ms Radol for the Appellant/Applicant

No appearance for the Respondent

Court Assistant: Hinga

