



REPUBLIC OF KENYA



**Kiama v Thiong'o & 2 others (Miscellaneous Application E001 of 2023)
[2025] KEELC 7901 (KLR) (12 November 2025) (Ruling)**

Neutral citation: [2025] KEELC 7901 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
MISCELLANEOUS APPLICATION E001 OF 2023
JM ONYANGO, J
NOVEMBER 12, 2025**

BETWEEN

DANIEL GICHUKI KIAMA APPLICANT

AND

LUCY NJAMBI THIONG'O 1ST RESPONDENT

NDIRANGU C. GICHANGI 2ND RESPONDENT

KIAMBU LAND REGISTRAR 3RD RESPONDENT

RULING

1. The Applicant moved the court vide a Notice of Motion dated 3rd July, 2023 seeking the following orders:
 1. Spent
 2. That pending the hearing and determination of this application inter-partes, there be a stay execution of the judgment and decree of the Subordinate Court dated 25th May 2022 in Kiambu, CMCELC No. 21/2019 and all consequential actions, orders and execution proceedings arising therefrom.
 3. That pending hearing and determination of the Application herein inter-partes, there be an order of injunction restraining the 1st Respondent against leasing, charging, selling, disposing off, wasting away, dealing with and or in any way interfering with the proprietorship of the suit property known as Kiambaa/Thimbugua/6479.
 4. That this application be heard inter-partes as a matter of urgency on such date and at such time as this Honourable Court may direct.



5. That time for the Applicant to appeal against the judgment/decree of the Subordinate Court delivered 25th May 2022 in Kiambu. CMCELC No. 21/2019 be and is hereby enlarged and the Applicant be and is hereby allowed to lodge an appeal against the said judgment and decree within 14 days from the date of the Order hereof or such period as the Court may direct.
 6. That pending hearing and determination of the intended appeal against the judgment and decree of the Subordinate Court delivered 25th May 2022 in Kiambu, CMCELC No. 21/2019, there be a stay execution of the judgment and decree of the Subordinate Court dated 25th May 2022 in Kiambu, CMCELC No.21/2019 and all consequential actions, orders and execution proceedings arising therefrom.
 7. That pending hearing and determination of the intended appeal against the judgment and decree of the Subordinate Court delivered 25th May 2022 in Kiambu, CMCELC No. 21/2019, there be an order of injunction restraining the 1st Respondent against leasing, charging, selling, disposing off, wasting away, dealing with and or in any way interfering with the proprietorship of the suit property known as Kiambaa/Thimbugua/6479.
 8. That the costs of this application be in the cause.
2. The Application is based on the Applicant's Supporting Affidavit sworn on the 30th June, 2023 and an Affidavit sworn by Vincent Mmeli Olala Advocate on an even date. The Applicant deposes that he has an arguable appeal against the decision of the lower court as set out in his Memorandum of Appeal.
 3. He explains that the trial court heard the matter on 29th September 2021 and 23rd February 2022, took the testimonies of both parties, and directed their advocates to file and exchange written submissions. He adds that on 13th April 2022, the trial court directed that the Appellant obtain the Respondent's submissions, file his within twenty-one days, and fixed judgment for 25th May 2022.
 4. The Applicant states that his advocates complied with the directions and attended court on 25th May 2022 for the delivery of judgment, but the matter was not listed as the court was not sitting. They were informed that the case would be mentioned on 26th May 2022 for directions. On that date, the matter was listed before another magistrate (Hon. W. O. Rading, SRM) who directed that judgment would be delivered virtually at 2:30 p.m. Counsel attended court at the scheduled time but was informed that the judgment would instead be delivered the following Thursday.
 5. He further avers that his advocates attended court on 2nd June 2022 as advised but were told that judgment would be delivered on notice. He states that both he and his advocates continued to follow up on the matter at the court registry without success until 22nd July 2022, when they were informed that the file had gone for extraction of a decree. He contends that his advocates later obtained an uncertified copy of the judgment, only to discover that it had allegedly been delivered virtually on 25th May 2022 when the court was not sitting.
 6. The Applicant contends that the discovery came over ninety days after the time for filing an appeal had already lapsed. He asserts that neither he nor his advocates were ever served with a notice of delivery of judgment or a request to approve a draft decree as required under Order 21 Rule 8 of the Civil Procedure Rules. He adds that the judgment and decree had caused him substantial and irreparable loss, as the Respondent had received and acknowledged large sums of money from him for the sale of the suit property yet continued to retain possession of it.
 7. He explains that the delay in filing the appeal was not deliberate but was occasioned by the trial court's failure to give notice of the delivery of judgment and the misleading information given regarding the judgment date. He further states that an earlier appeal, Thika ELCCA No. 68 of 2022, which had



been filed out of time together with an application for leave to appeal, was struck out on 26th June 2023 on a technicality.

8. The Applicant maintains that his intended appeal raises serious and arguable issues with good prospects of success. He urges the court to grant him leave to appeal out of time and to issue stay and injunctive orders pending the hearing and determination of the appeal, failing which both the application and the intended appeal would be rendered nugatory.
9. He asserts that he stands to suffer substantial and irreparable loss should the Respondent proceed with execution, as she might dispose of or interfere with the suit property known as Kiambaa/Thimbigua/6479, yet she lacks means to compensate him should the appeal succeed. He expresses willingness to comply with any conditions the court may impose, including provision of security, and states that no prejudice would be occasioned to the Respondent, who continues to occupy the property. Finally, he avers that the application was made without undue delay and that it is in the interest of justice for the court to allow it.
10. The Application is opposed by the 1st Respondent through the Replying Affidavit sworn by her on 2nd October 2023. In the said affidavit, she deposes that she was the Plaintiff in the suit at the trial court, which was concluded on 23rd February 2022, after which the court directed both parties to file written submissions. She adds that the court fixed the matter for mention on 30th March 2022 to confirm compliance, and that her advocate duly filed submissions on 29th March 2022.
11. She states that on 13th April 2022, the matter came up for mention when the Applicant's advocate, Mr. Olala, appeared while her advocate was absent. She explains that on that date, the Applicant was granted a further twenty-one days, up to 4th May 2022, to file submissions, and the court fixed 25th May 2022 as the date for delivery of judgment, directing the Defendant to serve the necessary notice. It is her position that the Applicant later filed his submissions on 19th April 2022, though they were dated 14th April 2022.
12. The 1st Respondent asserts that the judgment was duly delivered virtually on 25th May 2022 by Hon. Grace A. Omodho (PM), as evidenced by the certified copies of proceedings showing that the court was sitting on that day. She maintains that her advocate was personally present when judgment was delivered and attached supporting documents to confirm this.
13. She disputes the Applicant's allegation that judgment was not delivered on 25th May 2022 and contends that the cause list relied upon by the Applicant was deliberately falsified. According to her, the Applicant had taken page one from the cause list of Hon. Rading dated 26th May 2022 and page two from the cause list of Hon. Omodho dated 25th May 2022, and combined them to mislead the court into believing that the judgment had been listed before Hon. Rading on 26th May 2022. She maintains that there were no proceedings before Hon. Rading, and that judgment could not have been delivered by him.
14. The 1st Respondent further deposed that the Applicant had previously filed Thika ELC Appeal No. E068 of 2022, seeking similar reliefs, and that this court had already delivered a ruling on 26th June 2023 striking out that appeal and its accompanying application for being incompetent.
15. She adds that the current application was an attempt to revive the same appeal and application that had been struck out. She urged the court to take note that, in striking out the earlier matter, the court had already addressed the core issues regarding the delivery of judgment and the competency of the appeal.
16. Finally, the 1st Respondent notes that the court in dismissing the appeal and the application in ELC No. E068 of 2022, did not address two issues identified for determination. Therefore, she urges the



court to consider the two issues and find that the prayer for enlargement of time is unmerited and to dismiss this Application with costs.

17. The Application was canvassed through written submissions, and both the Applicant and the 1st Respondent filed their submissions.
18. The only issue for determination is whether the Applicant should be granted leave to appeal out of time and if so whether execution ought to be stayed.
19. The record shows that the Applicant previously filed Thika ELC Appeal No. E068 of 2022, together with a Notice of Motion dated 2nd August 2022, seeking substantially similar reliefs to those sought herein. In a ruling delivered on 26th June 2023, this court (Hon. B.M. Eboso, J.) found that the appeal had been filed out of time without prior leave, rendering it a nullity in law. Consequently, both the appeal and the motion were struck out for being incompetent.
20. The present application was filed barely a month after that ruling. Although the Applicant contends that he has now approached the court properly, the Application is anchored on the same factual foundation namely, the alleged irregularity surrounding the delivery of judgment in Kiambu CMCC No. 21 of 2019 on 25th May 2022. The 1st Respondent maintains that the judgment was duly delivered virtually on the reserved date and that the Applicant's explanation for delay lacks merit.
21. The principles for granting an application for leave to appeal out of time are now well settled. In the case of *Nicholas Kiptoo Arap Salat v IEBC & 7 Others* (2014) eKLR, it was held that:

“... 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:

- a. “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;
- b. a party who seeks extension of time has the burden of laying a basis, to the satisfaction of the Court;
- c. whether the Court should exercise the discretion to extend time, is a consideration to be made on a case- to- case basis;
- d. where there is a reasonable [cause] for the delay, [the same should be expressed] to the satisfaction of the Court;
- e. whether there will be any prejudice suffered by the respondents, if extension is granted;
- f. whether the application has been brought without undue delay;”

22. 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 case of *Odera Obar & Co Advocates v Acquva Agencies Limited* (2021) eKLR where the court held as follows:

“The law does not set out any minimum or maximum period of delay. All it states is that the delay should be explained. A plausible and satisfactory explanation for delay is the key



that unlocks the court’s flow of discretionary favour. There has to be valid and clear reasons upon which discretion can be favourably exercisable”

23. In this case, the judgment of the lower court was delivered on 25th May 2022. The Applicant filed an appeal on 1st August 2022 without seeking prior leave. That appeal was struck out in June 2023. The present motion was filed barely a month later, yet it does not offer any new explanation for the failure to comply with statutory timelines. The Applicant still blames the alleged lack of notice of delivery of judgment. No credible material has been presented to show that the delay was excusable or that the Applicant acted promptly once he became aware of the Judgment. On the other hand, the 1st Respondent has already been dragged through protracted litigation over the same issue.
24. This court finds that the Applicant has not met the threshold for enlargement of time under section 16A of the *Environment and Land Court Act* and Order 50 rule 6 of the Civil Procedure Rules. Consequently, the court further finds that the Application is without merit and is therefore dismissed with costs to the 1st Respondent.

DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA THIS 12TH DAY OF NOVEMBER 2025.

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J. M ONYANGO

JUDGE

In the presence of:

1. Mr Wachira for Mr Kanyi for the Applicant
2. No appearance for the Respondent

Court Assistant: Hinga

