

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ELCLMISC E050 OF 2025

HASSAN NDAIKWA MRINA
PLAINTIFF

VERSUS

BENYIRA DEULE NYIRO
DEFENDANT

RULING

1. The application before this court for determination is the notice of motion dated 15th October 2025.
2. In **ELCLA NO 10 OF 2025** this court found as follows:

“8. In the present case, judgment was delivered on 30/10/2024 and the present appeal filed on 13/3/2025. From the evidence presented, it is clear that the Appellant filed an application dated 21/11/2024 seeking stay of execution and leave to lodge appeal out of time. The application was filed in ELC Misc. Application No. E050 of 2024 and was determined on 17/12/2024. The Hon. Justice Makori ordered as follows:

“1. THAT by consent, stay of execution is hereby allowed; Kshs. 200,000 be deposited in this Court within 30 days hereof;

2. THAT a Record of Appeal be prepared and served within 30 days hereof;

3. THAT a response be filed within 14 days after service;

4. THAT further mention on 13th February, 2025.”

9.It is evident that the timelines imposed by the court were not complied with. There is no evidence on record showing what transpired on 13/2/2025 or any indication that the Appellant sought an extension or regularization of his position thereafter.

10. Further, while the Appellant claims that the court granted him 14 more days on 13/3/2025 to file and serve a substantive appeal and submissions, there is no record or extract of proceedings to support this assertion. In the absence of such documentation, and in light of the Appellant's unexplained delay, this court is constrained to find that the leave granted lapsed long before the appeal was eventually filed.

11. The appeal, having been filed outside the timelines set by the court and without any extension or justification, is incompetent. This court is devoid of jurisdiction to entertain it.

12. Accordingly, the Notice of Motion dated 22/5/2025 is allowed. The appeal is hereby struck out. The Appellant shall bear the costs of the application."

3. **Benyira Deule Nyiro** filed a notice of motion dated 15th October 2025 seeking that the Kenya shillings 200,000 deposited are securities to him through his advocate on the basis that the appeal was struck out as indicated in the excerpt of ruling set out above.
4. **Hassan Ndaikwa Mrina**, the respondent in the present application, never filed any response to the application.
5. This court is aware that the amount Kenya Shillings 200,000/- is what was awarded as damages. It is not disputed that damages of Kenya shillings 200,000/- was awarded to the applicant herein. The respondent admitted as such when he deposited money. In the circumstances, it is quite an enticing argument for the release of the deposited sum that has been made, on the basis that it was deposited as security and that the appeal has been dismissed, having been filed out of time. However, there is no judgment to be executed in respect

of the appeal, the appeal not having been heard on its merits by this court. Thus, this court's business ended with its striking out.

6. This court is also of the view that execution should essentially be undertaken in the Court where the matter was heard. This is not the court that heard the matter. **Order 22 Rule 6** provides as follows:

“6. Application for execution [Order 22, rule 6]
Where the holder of a decree desires to execute it, he shall apply to the court which passed the decree, or, if the decree has been sent under the provisions hereinbefore contained to another court, then to such court or to the proper officer thereof; and applications under this rule shall be in accordance with Form No. 14 of Appendix A...”

7. It is not that the decree of the lower court has been sent to this court for execution. This court does not have the lower court file record to guide on what transpired at the lower court.
8. Though I find nothing that nothing bars this court from granting the application dated 15th October 2025, I note that execution will still have to issue in respect of costs and such other orders as were allowed by the lower court which are not before this court for execution.
9. The respondent has opted to object to the release of the deposited sum. I have taken consideration of the fact that he has not filed a response to the present application, but it is doubtful that perchance he had, the need to have **Order 22 Rule 6** followed to the letter would have required any additional support to attract the dismissal of the present application; clearly, the respondent is oblivious of the risk as to escalated costs in the execution process, but this court is certain that

he has his own reasons for the objection, and that is of the view that under **Article 50** of the Constitution he has a right to be heard; that right to be heard is not in respect of a simple release of a deposit, but in objection to execution against him, and this court is not the execution court. In the light of the foregoing, the present application resembles a shortcut that detours the participation in the execution process that the respondent desires to be involved in.

10. Consequently, and for the purpose of ensuring tidiness and a wholistic execution process, and for the reason that the court that heard the matter should oversee execution of its decree, and for the further reason that the respondent requires to be heard in the execution process, this court disallows the application dated 15th October 2025 and orders that execution issue from the proper court that dealt with the matter. It is noted that that the applicant knows where the money is deposited and he can make an application for the appropriate orders in the court properly seized of the jurisdiction of issuing execution orders.

11. The application dated 15th October 2025 is therefore dismissed.

12. Each party shall bear their own costs of the application.

Dated, signed and delivered at Malindi on this 4th day of November, 2025.

A rectangular box containing a handwritten signature in blue ink. The signature is cursive and appears to read 'A. M. M. M.' or similar, though it is difficult to decipher precisely.

**MWANGI NJOROGE
JUDGE, ELC, MALINDI.**