



**Osore v Okaka (Environment and Land Miscellaneous Application
E029 of 2025) [2025] KEELC 7542 (KLR) (3 November 2025) (Ruling)**

Neutral citation: [2025] KEELC 7542 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT SIAYA
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E029 OF 2025
AE DENA, J
NOVEMBER 3, 2025**

BETWEEN

JOHN AWUOTH OSORE APPLICANT

AND

JAMES OUMA OKAKA RESPONDENT

RULING

1. The applicant approached this court under these proceedings under the Notice of Motion dated 19/08/2025 for the following verbatim orders:-
 1. Spent
 2. That the Applicant be granted leave to Appeal out of time the Judgment delivered on 23rd May 2018 in Siaya MCELC No. 3 of 2014 James Ouma Okaka –VS-John Owuoth Osore.
 3. That there be a stay of all proceedings and or execution in Siaya MCELC No. 3 of 2014 James Ouma Okaka –VS-John Owuoth Osore pending the hearing and determination of this application inter parte.
 4. That this Honourable Court be pleased to stay further proceedings and execution of the court order of 29th July 2025 by Hon. Limo in Siaya MCELC No. 3 of 2014 James Ouma Okaka –VS-John Owuoth Osore and/or any further action thereof pending the inter parte hearing of this application.
 5. That this Honourable Court be pleased to stay further proceedings and execution of the court order of 29th July 2025 by Hon. Limo in Siaya MCELC No. 3 of 2014 James Ouma Okaka – VS-John Owuoth Osore and/or any further action thereof pending the inter parte hearing of this and determination of this application.



6. That this Honourable Court be pleased to stay further proceedings and execution of the court order of 29th July 2025 by Hon. Limo in Siaya MCELC No. 3 of 2014 James Ouma Okaka – VS-John Owuoth Osore and/or any further action thereof pending the inter parte hearing of this application pending the hearing and determination of intended appeal from the Judgment dated 23rd May 2018.
 7. That the Draft Memorandum of Appeal herein dated 19th August, 2025 be admitted as duly filed upon payment of the requisite court fees.
 8. That costs of this application be provided for.
2. The application is supported by the affidavit of JOHN OWUOTH OSORE the Applicant. It is deponed that the lower court delivered Judgment in Siaya MCELC No. 3 of 2014 James Ouma Okaka –VS-John Owuoth Osore on the 23rd May 2018. The applicant was not aware of the same as he was acting in person and was not notified of the delivery of the said Judgment. A copy of the said judgment is annexed. That he only came to realize of the judgment when he was served with an application from the respondents advocate.
 3. The applicant avers he then I instructed his current advocate who vide a letter dated 30th July 2025 requested for perusal of the file and proceedings. That on 29th July, 2025 the trial court without giving his advocate an opportunity to put in a formal response in the application dated 17th June 2025 issued an order evicting the applicant and directed the OCS Akala Police Station to supervise the said illegal eviction.
 4. The applicant adds that he was dissatisfied with the Judgment and intends to appeal out of time and stay the lower Court orders for eviction. A copy of the eviction order is annexed. That the intended appeal is prima facie arguable because he was not accorded a fair hearing before the trial court. A Memorandum of Appeal is annexed.
 5. It is asserted that unless the orders sought herein are granted, the applicant stands to suffer irreparable harm and prejudice, as he stands to be evicted from his ancestral land where he has lived since he was born. That it is in the interest of justice equity and conscience the orders sought for be granted as prayed to enable this Honourable Court effectively hear and give just a determination of the matters herein. It is stated that no prejudice will be occasioned to any party in the suit if the orders sought herein are granted

Replying Affidavit

6. The application and proceedings were opposed through the replying affidavit sworn by James Ouma Okaka sworn on 3/09/2025.
7. It is deponed that the respondent lawfully purchased land parcel no. South Gem/Kaudha/1266 from Mr. Sabastian Achar Okodo in 2012 after conducting due diligence. A title deed was subsequently issued in his name on 19th June 2012. Copies of Green Card, title deed, and official searches were annexed. The applicant in 2013, unlawfully entered the suit land, which was reported to the area Assistant Chief and the OCS Akala Police Station and a demand notice dated 3rd October 2013 issued through Jumba & Company Advocates to cease his unlawful activities on the land. That the applicant did not comply necessitating the suit Siaya MCEC No. 3 of 2014: James Ouma Okaka vs. John Owuoth Osore.



8. It is averred that the above suit proceeded to full hearing, and on 23rd May 2018 judgment was delivered in the respondents favor where a permanent injunction was issued against the Applicant, restraining him from interfering with the property and costs.
9. It is deponed that despite the Judgment, the Applicant has persistently trespassed on the land, continued cultivating, and engaged in gold mining activities which have caused severe environmental degradation and financial loss to the applicant despite demands being served upon him. Further that in the year 2020 and 2021, the applicant took advantage of the respondents absence occasioned by COVID-19 movement restrictions by scaling up his activities on the land excavating deep pits, carted away soil using trucks, erected temporary structures, and installed machinery for excavation by way of blasting and processing of soil and rocks.
10. A notice to vacate and pay awarded costs was consequently issued on 25th October 2022, and duly served by a licensed court process server, Mr. George Oluoch Rathing, on 2nd November 2022. The Affidavit of Service dated 7th November 2022 is annexed.
11. The applicant states that due to the Applicant's persistent disobedience and unlawful occupation, he was compelled to file an application dated 17th June 2025 seeking eviction orders against him. A copy is annexed. The application and hearing date were duly served upon the Applicant, who failed to file any response. An Affidavit of Service dated 24th July 2025 is annexed. That upon hearing the matter, the Court issued an eviction order on 29th July 2025 directed to the OCS Akala Police Station. A copy dated 29th July 2025 is annexed.
12. The applicant reiterates the eviction order was properly and lawfully issued after the Court considered the history of the dispute and the Applicant's consistent defiance of court orders. The applicant's counsel had ample opportunity to respond but failed to do so. That the Applicant's reliance on Land Tribunal Case SYA/75/2002 is misplaced. The tribunal had recommended that the land be divided into two equal portions, with partition to be effected by the Government Survey Office. That recommendation was never implemented, and the land remained intact, lawfully registered in the name of the vendor, Mr. Sabastian Achar Okodo, until it was sold and transferred to the applicant in 2012. The Applicant cannot rely on an unimplemented tribunal award to challenge a valid and indefeasible title duly issued to the respondent.
13. It is urged that the applicant's allegations of having an arguable appeal are unfounded. The suit was procedurally filed, prosecuted, and determined. He was duly served with pleadings and summons but chose to ignore them. He cannot now claim violation of natural justice. He has been indolent having slept on his rights for over seven years since the judgment of 2018, only rushing to court after the issuance of eviction orders in 2025 an inordinate and inexcusable delay and far too long. The application is termed as an afterthought to frustrate and delay the execution of a lawful judgment and eviction order issued by the Court.
14. That moreover the applicant has not shown or established what substantial loss he stands to suffer if stay of execution is not granted, whereas the respondent continues to suffer ongoing harm from his unlawful occupation and destruction of my land.
15. That given the applicant's poor conduct, deliberate disobedience of court, orders and continuous unlawful occupation and destruction of the land he should not be indulged by this Honourable Court without first tendering security for costs and the decretal amount. He has neither offered nor demonstrated ability to provide such security, and it would be unjust to subject the applicant to further litigation expenses without protection.
16. The court is invited to dismiss the application.



17. A Notice of preliminary objection dated 3/09/2025 was filed in response mainly stating that there is inordinate delay. This is dealt with later in this ruling.

Further Response

18. The applicant in further response filed a further affidavit dated sworn on 16/09/2025 which the court has noted reiterated the averments above adding that no Land Control Board consent was sought during the sale in 2012.

Submissions

19. The application together with the preliminary objection raised were canvassed by way of written submissions. The Respondents submissions are dated 2/10/2025. The applicants submissions were filed 27/10/2025 with leave of the court. The court has considered the submissions.

Analysis and Determination

Notice of Preliminary Objection

20. I will first determine whether the preliminary objection is properly raised guided by the case of Mukisa Biscuits Manufacturing Co. Ltd -vs- West End Distributors [1969] E.A. 696 where Law JA at page 700 stated;

“... a preliminary objection consists of a point of law which has been pleaded, or which arises by clear implication out of pleadings, and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the court or plea of limitation or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration.”

21. Further Black’s law Dictionary 11th Edition defines a preliminary objection as

..as an objection that, if upheld would render further proceedings before the tribunal impossible or unnecessary. An objection to the court’s jurisdiction is an example of a preliminary objection’.

22. Having perused the grounds raised in the Notice of Preliminary objection the court has noted that the same are grounds that are not properly raised since they are contentions that can be argued as normal grounds of opposition to the application. The court would be also required to ascertain some facts to arrive at their determination.

23. The preliminary objection is therefore struck out.

Notice of Motion dated 19/08/2025

24. I have considered the application, the responses thereto and rival submissions of the parties and the main issue for determination is whether the orders sought should issue.

25. The Motion is filed under the provisions of Articles 50 (1), 159(2), Sections 1A,1B & 3A of the [*Civil Procedure Act*](#).

26. For me the [*Civil Procedure Act*](#) and attendant rules should be the first port of call. The application seeks orders for enlargement of time to file appeal before this court and stay of execution of the judgement and decree of the trial court herein.



27. Section 79G of the *Civil Procedure Act* provides that:

Every appeal from a subordinate court to the High Court shall be filed within a period of thirty days from the date of the decree or order appealed against, excluding from such period any time which the lower court may certify as having been requisite for the preparation and delivery to the appellant of a copy of the decree or order: Provided that an appeal may be admitted out of time if the appellant satisfies the court that he had good and sufficient cause for not filing the appeal in time.

28. There are numerous judicial decisions where the courts have expounded on the exercise of the courts power to enlarge time.

29. In the case of *Nicholas Kiptoo Arap Korir Sala Vs IEBC & Others (2014)* cited by the respondents the Supreme Court of Kenya emphasised that extension of time is not a right and that it is an equitable remedy available to a deserving party at the discretion of the court.

30. . In *Daphne Parry vs. Murray Alexander Carson [1963] EA 546* the court had this to state; -

although the provision for extension of time requiring “sufficient reason” should receive a liberal construction, so as to advance substantial justice, when no negligence, nor inaction, nor want of bona fides, is imputed to the appellant, its interpretation must be in accordance with judicial principles. If the appellant had a good case on the merits but is out of time and has no valid excuse for the delay, the court must guard itself against the danger of being led away by sympathy, and the appeal should be dismissed as time-barred, even at the risk of causing injustice and hardship to the appellant.’

31. In *First American Bank of Kenya Ltd vs. Gulab P Shah & 2 Others Nairobi (Milimani) HCCC NO. 2255 of 2000 [2002] 1 EA 65* the Court enunciated the principles to be considered in exercising the discretion whether or not to enlarge time and whether or not to grant such an application as follows:

- (i) the explanation if any for the delay;
- (ii) the merits of the contemplated action, whether the matter is an arguable one deserving a day in court or whether it is a frivolous one which would only result in the delay of the course of justice;
- (iii) Whether or not the Respondent can adequately be compensated in costs for any prejudice that he may suffer as a result of a favourable exercise of discretion in favour of the applicant.

32. Applying the above guidance to the present application I will proceed to consider if the reasons given for the delay are sufficient to warrant the exercise of the courts discretion in favor of granting the extension of time.

33. The judgement the subject of the intended appeal was delivered in May 2018. Based on the provisions of section 79 aforesaid the appeal ought to have been filed within 30 days from the date of the decree. Where there is delay on the part of the court in supplying proceedings a certificate of delay is issued since the period of delay is not to be counted. The present application filed under these proceedings was filed in August 2025. A period of over 7 years.

34. Is the above delay excusable? The reason advanced by the applicant is that he was not notified of the date of the delivery of judgement the main reason being that he was acting in person. Did it matter that the applicant was in person? For me he was aware of the proceedings in court and it was incumbent



upon him to follow up on the matter being a party who has been sued in the proceedings even if he was acting in person. I do not find this a sufficient reason that would excuse a delay of the 7 years herein.

35. Moreover the applicant does not fully disclose when he learnt of the said judgement except that he produces a letter from his advocate seeking for copies of the proceedings and judgement. In addition what seems to be clear from the annexures attached by the respondents, the applicant had been aware of the judgement in view of the demand notices produced including affidavits of services by court process servers for periods in 2022 before the said July 2025. I find no bonafides on the part of the applicant.
36. In view of the above this court makes a finding that no sufficient reason has been given for the delay of 7 years herein. The same is not excusable and I consequently decline to exercise my discretion in favor of the application for grant of leave to file appeal out of time.
37. Having declined to grant leave to file an appeal out of time I find no reason to spend time on the rest of the prayers as they were dependent upon an order for enlargement of time.
38. The application is hereby dismissed with costs to the respondents.
39. The file shall be closed.

Orders accordingly

DELIVERED AND DATED AT SIAYA THIS 3RD DAY OF NOVEMBER 2025

HON. LADY JUSTICE A.E. DENA

JUDGE

03/11/2025

Ruling delivered virtually through Microsoft teams Video Conferencing Platform in the presence of:

Mr. Ombati Otieno for Applicant

Mr. Rabala for the 1st Respondent

Court Assistant: Ishmael Orwa

