REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

CIVIL MISC. APPLN NO. E134 OF 2025

KENYA POWER & LIGHTING COMPANY LTD ..... APPLICANT

- VERSUS -

ROSE AKINYI ODENY ..... RESPONDENT

R U L I N G

1. An order was made on **17/7/2017** by the lower court requiring the applicant to refrain from doing certain things and to reconnect power supply to the property known as **Kisumu Manyatta 'A'/1385 and 1386** ('the suit property'). That order is said to have been appealed against and the appeal was declined.

2. On **27/11/2024**, the respondent took out a Motion on Notion and sought to enforce the said orders by way of requiring the responsible officers of the applicant to show cause. Vide a ruling delivered on **5/4/2025,** the trial court allowed the application and thereby required certain Chief Offers of the applicant to attend Court at the time to be appointed to show cause why they should not pay the debt.

3. Time passed by and on **8/7/2025**, the applicant took out a Motion on Notice seeking two orders, leave to appeal out of time and stay of execution of the said order of **5/4/2025** pending appeal. The Motion was supported by the affidavit of **Justus Ododa** sworn on **8/7/2025**.

4. The grounds for the Motion were that; leave to appeal was granted by the trial court but due to the applicant's internal workings, it took long to obtain the necessary approvals to appeal; that the intended appeal has immense chances of succeeding, that the order appealed against seeks to enforce or have executed an 8 year old order, that unless the orders sought are granted, the intended appeal will be rendered nugatory.

5. The application was opposed vide the replying affidavit of **Rose Akinyi Odeny** sworn on 13/8/2025. She deposed that no good reason had been given for granting extension of time within which to appeal the order of **5/4/2025**. That the appellant being in contempt, it should not be granted any audience. That in any event, court orders should be obeyed to uphold the authority of the Court.

6. I have considered the record, the rival contestations and the submissions on record. The issues that fall for determination are three; to wit, ***whether the appellant should be denied audience, whether extension of time should be granted, and if so, whether a stay of execution should be ordered***.

7. On the first issue of the right of audience, it is the general rule that a party to a litigation must at all times be heard before any adverse order can be made against him. No one should be condemned without a hearing. However, there is an exception to this general rule. In the cases of **Hadkinson vs Hadkinson [1952] ALL ER 567** and **Econet Wireless (K) Ltd vs Minister for Information and Communication & Anor (2005) eKLR**, it was held that a contemnor has no right of audience in any Court of Law. That bar to audience is to be invoked if a party's disobedience continues and that if with such continuation, it impedes the course of justice. It is however, in the discretion of the Court to refuse to hear such contemnor.

8. In the present case, it is not in dispute that an order was made on **17/7/2017**. That order was allegedly appealed against but the appeal was declined. The applicant alleges that that order is too old, 8 years to be exact, for it to be enforced.

9. A clear answer to that contention is that, however old an order is, the same must be obeyed so long as it has not been set aside. The contention that an order of injunction under ***Order 40 of the Civil Procedure Rules*** has a lifespan of only 1 year cannot hold. If that were the case, parties against whom orders are made will choose to disobey such orders and after the expiry of 1 year, they will turn around and tell the successful party and the Court, *sorry, we have successfully disobeyed the order for 1 year. It has now lapsed. Too bad. Life goes on as you have both acted in vain. We now go back to status ante."*

10. That won't do. That was not the intension of the legislature in enacting the twelve months' period in ***Order 40 of the Civil Procedure Rules.*** The intention was to encourage litigants, to expedite the prosecution of their cases where an injunction had been granted at an interlocutory stage. Not to allow recalcitrant defendants off the hook after disobeying such order for a whole year. That will be extreme abuse of the court process and against the rule of law.

11. In the present case, it is a sorry state that the applicant has successfully avoided to obey an order for 8 years. Under the eyes of our Constitution, ***Articles 10 and 159*** thereof, that is against the principle of the Rule of Law and the decree that justice shall not be delayed. Eight (8) years is too long a period to wait for justice. It is time that the order was complied with. With the impunity exhibited in this case, the applicant is not deserving a hearing.

12. The foregoing would have been the end of the matter. However, I will grant the applicant an opportunity of being heard and therefore consider its Motion on merit.

13. On leave to appeal, the principles are well settled, the length of the delay, the reason for the delay, the prejudice to be suffered by the other party and probably the merits of the intended appeal. See **Nicholas Kiptoo Arap Korir Salat vs IEBC & 6 Others (2013) eKLR**.

14. In the present case, the order sought to be impugned was made on **5/4/2025**. The present Motion was made on **8/7/2025**. I should here appreciate the speed at which the applicant's advocates moved to file the Motion. It was averred that the instructions to appeal were given on **8/7/2025** and on the same day the present Motion was made. That was commendable by any standards.

15. However, that does not cure the lapse in the period between **5/4/2025** and **8/7/2025**. That was a whole 93 days. Since the time for filing the appeal lapsed on **4/5/2025**, there was a delay of 63 days. That by any standards was inordinate. It needed to be explained in terms of the second principle.

16. The next issue is the reason for the delay. It was averred that the

> ***"…delay in appropriately instructing our Advocates on record to move the Court and file the necessary pleadings from the date when the ruling was delivered is actuated by the applicant's internal working which fundamentally took long to undergo the necessary relevant approvals noting its working logistics."***

17. With greatest respect, nowhere in our Law is the Court required to consider the internal workings of any litigant in the calculation or enforcing the timelines set by the Law. Were that to be a consideration, then there would be no equality arms before the Law. The Court will always be forced to bend backwards to examine the internal workings or personal dispositions of each litigant in order to apply the law.

18. In view of the foregoing, this Court holds that the internal workings of a litigant cannot be a good reason for delay in taking an action, leave alone to appeal. Where internal workings of a corporation does not allow it to make a decision within 30 days, the period given to appeal, that cannot be said to be a 21st century working ethos. The Court holds that there was no good reason for the delay.

19. The third issue is the prejudice, if any, to be suffered by the opposite party. Although the respondent did not state it, waiting for 8 years to reap the fruits of a litigation is an injustice that cannot be compensated in any manner. The earlier the provisions for ***Article 159 (2) (b)*** that *'justice shall not be delayed'* are complied with the better.

20. With what I have already stated above, I need not consider if the appeal is meritorious.

21. One other thing, any further delay in execution of the order might invite the provisions of the Limitations Act. That in my view will be the greatest injustice in a case. I think what was required of the applicant was so simple and summary that should not have invited this long protracted litigation. It should have complied with the order, reconnect the power and then, sought to prove at

the trial that the order was not warranted. The order would then have been reversed. A dispute on an alleged debt should not have come thus far.

22. In view of the foregoing, leave to appeal out of time is denied.

23. Having failed to convince this Court that it is entitled to leave to appeal, the other part of the applicant's Motion, stay of execution does not fall for consideration. Even if it were, the applicant had not shown that it would suffer substantial loss if it complied with the order, no security for the due performance of the order that would ultimately be found binding on it had been offered.

24. Accordingly, I find the Motion dated **8/7/2025** to be without merit and I dismiss the same with costs. Any orders in force are hereby discharged.

It is so ordered.

DATED and **DELIVERED** at Kisumu this **26th** day of **November, 2025**.

A. MABEYA, FCI Arb

JUDGE