



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT**  
**KABARNET**

**MISC APPLICATION NO. E001 OF 2025**

**WILSON ROTICH.....**  
**APPLICANT**

**VERSUS**

**LINA KIMONO CHERONO.....**  
**RESPONDENT**

**RULING**

1. Before this court is an application dated 13<sup>th</sup> March, 2025 seeking the following orders;
  1. Spent.
  2. That the Honourable court be pleased to allow the firm of M/S Chepkilot, Kiptoo Co. Advocates to come on record for the applicant in place of the firm of M.K Chebii & Co. Advocates.

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3. That upon granting prayer 2 above, the Honourable Court be pleased to grant the applicant leave to lodge an appeal after expiry of the stipulated time, file his memorandum of appeal and the attached copy be deemed as properly filed on such terms and conditions as the honourable court may deem fit to impose.
4. That the court be pleased to order stay of execution of the decree issued by the trial court on 15<sup>th</sup> December, 2022 in ELC NO. 7 of 2017, the subject of the application herein.
5. Costs of this application be in the cause.
2. The application is premised on the grounds on its face and supported by the affidavit sworn by Wilson K. Rotich on 13<sup>th</sup> March, 2025. He deposes that being dissatisfied with the judgment by the trial court delivered on 13<sup>th</sup> April, 2019, he instructed his advocate to file an appeal; that it was only after he was served with an eviction notice on 1<sup>st</sup> March, 2024 through the OCS Tengas Police Station, that he discovered that his previous advocate, M.K.Chebii never filed the appeal.

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3. He states that in compliance with the law, his previous and current advocates filed a consent order that the firm of Chepkilot, Kiptoo be allowed to come on record and represent him in this appeal in place of the firm of M.K. Chebii. It is his case that his appeal is arguable with high chances of success; that if an order to stay execution of the eviction order is not granted, he will suffer irreparable damage as he stands to lose the property; that the outcome of the appeal will be rendered nugatory and no prejudice will be suffered by the respondent that cannot be remedied by way of damages if the application is allowed.
4. The application is opposed vide a replying affidavit by Christopher Kipkech Tallam sworn on 10<sup>th</sup> July, 2025. He avers that he is the son to the respondent, now deceased, and the legal representative of his Estate having obtained letters of Administration *ad litem* in Kabarnet CM'S Court in Misc application No. E 024 of 2024 on 22<sup>nd</sup> May, 2025 to enable him conclude Kabarnet CM'S ELC NO. 7 of 2017.

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5. He avers that the application is misconceived, vexatious, bad in law, defective, tainted with falsehoods and an abuse of the court process; that the applicant filed an appeal in Eldoret High Court, Appeal No. 19 of 2019 vide a memorandum of appeal dated 4<sup>th</sup> June, 2019 which was dismissed for want of prosecution on 27<sup>th</sup> October, 2022 and the lower court file returned to Kabarnet law Courts for execution.
  6. He deposes that the applicant through one of his tenants acting as his proxy, filed Eldoret Business Premises Tribunal case No. E041 of 2023 which was struck out after the Tribunal learnt that the Kabarnet Chief Magistrate Court was ceased of the matter.
  7. It is his contention, that the applicant again filed an application dated 27<sup>th</sup> February, 2023 in Appeal No. 19 of 2019 seeking to reinstate the dismissed application but the application was dismissed on 4<sup>th</sup> July, 2023. He deposes that the applicant having filed this application in a new file instead of filing it in Appeal No. 19 of 2019, is a vexatious litigant who should not be given any audience by this court.

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8. Pursuant to directions given on 16<sup>th</sup> September 2025, the application was disposed off by way of written submissions. The applicant filed his submissions on 6<sup>th</sup> October, 2025 which I have read and considered. The respondent did not file submissions but chose to rely on his replying affidavit.
9. In his submissions dated 2<sup>nd</sup> October 2025, the applicant identified the following as the issues for determination;
- i) Whether the applicant has established sufficient cause for extension of time to lodge an appeal.
  - ii) Whether the applicant has demonstrated an arguable appeal with high chances of success.
  - iii) Whether the applicant is entitled to an order of stay of execution pending appeal.
10. On whether the applicant has established sufficient cause for extension of time to lodge an appeal, it is submitted that the delay has been explained as having been caused by counsel. He asserts that mistakes of counsel should not be visited upon an innocent litigant. He relied on **Section 79G** of the Civil Procedure Act

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and the cases of **Nicholas Kiptoo Arap Salat v IEBC & 7 Others (2014) eKLR** and **Belinda Murai & 9 others v Amos Wainaina [1978] KLR 278**.

11. On whether the applicant has demonstrated an arguable appeal with high chances of success, it is submitted that the applicant will suffer substantial loss as he risks eviction and permanent loss of his property and that the intended appeal will be rendered nugatory. He relied on **Order 42 Rule 6 (2)** of the Civil Procedure Rules and the case of **RWW v EKW [2019] eKLR**.
12. I have considered the application, replying affidavit and submissions. I find the issue for determination to be whether the orders sought in the application should be granted.
13. On whether the firm of Chepkilot, Kiptoo should be allowed to come on record in place of M.K Chebii & Company Advocates; the outgoing and proposed incoming advocates having filed a consent in accordance with **Order 9 rule 9 (b)** of the Civil

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Procedure Rules, I see no reason to deny the order and  
— allow prayer 2 as sought.

14. On whether this court should exercise its discretion and extend time to allow the applicant file an appeal, I wish to start by pointing out that it is not lost to this court that judgment was delivered by the trial court on 13<sup>th</sup> May 2019; that the applicant through his previous advocate M.K Chebii filed an appeal in Eldoret High Court Appeal No. 19 of 2019 on 5<sup>th</sup> June 2019 which was dismissed for want of prosecution; that the respondent again filed an application in appeal No. 19 of 2019 dated 27<sup>th</sup> February 2023 to reinstate the appeal but this application was also dismissed on 4<sup>th</sup> July, 2023. After the applicant was served with an eviction order on 1<sup>st</sup> March 2025, he decided to try his luck in this court.
15. The applicant has come to court with unclean hands and is dishonest. He concealed the history of this matter. He filed an appeal which was dismissed and the application to reinstate the appeal was also dismissed.

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In her ruling in Eldoret ELC Appeal No.19 of 2019 delivered on 4<sup>th</sup> July, 2023, **Onyango Jane J** stated;

**“The delay has not been explained at all. The Applicant has admitted that he only learned that his appeal had been dismissed when he was served with an eviction notice. He ought to have realized that the case belonged to him and he had the responsibility to follow up on his case with a view to ensuring that his appeal was prosecuted. He has not demonstrated what steps he took to follow up on the progress of his appeal. The Applicants’ attempt to blame his former advocate for failing to prosecute his appeal is cannot be countenanced by this court. In failing to follow up on his appeal, the applicant is clearly indolent.”**

16. Looking at the history of this matter, it is clear the applicant is a vexatious and dishonest litigant who should not be entertained by this court and his pattern of forum shopping should be put to a stop. This court finds the instant application to be an abuse of the court process and sees no point in considering the prayer for

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stay of execution of the decree. The application is  
\_\_\_\_\_ dismissed with costs to the respondent.

17. Orders accordingly.

**Dated, signed and delivered virtually at Kabarnet  
this 10<sup>th</sup> day of November, 2025.**

**L. N. WAITHAKA  
JUDGE**

**Ruling read virtually in the absence of all the parties**

Court Asst.: Ian.