



**Muhavi v Shiunza (Environment and Land Appeal 064 of 2024)  
[2025] KEELC 8310 (KLR) (26 November 2025) (Ruling)**

Neutral citation: [2025] KEELC 8310 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA  
ENVIRONMENT AND LAND APPEAL 064 OF 2024  
A NYUKURI, J  
NOVEMBER 26, 2025**

**BETWEEN**

**JERIDA MUHAVI ..... APPELLANT**

**AND**

**JOHN FOLIO SHIUNZA ..... RESPONDENT**

**RULING**

1. Before court is a notice of motion dated 11<sup>th</sup> November 2024 filed by the respondent seeking orders that this appeal together with the application dated 4<sup>th</sup> September 2024 and filed on 9<sup>th</sup> October 2024 be struck out and the orders made on 11<sup>th</sup> October 2024 and extended on 29<sup>th</sup> October 2024 granting stay of execution of the lower court judgment, be set aside.
2. The application is supported by the affidavit sworn by the respondent on 11<sup>th</sup> November 2024. The applicant's case is that the judgment appealed against was delivered on 21<sup>st</sup> August 2024 and the appeal herein filed on 9<sup>th</sup> October 2024. That the appeal was filed outside the statutory period of 30 days without leave of court. That the applicant was never served with application for leave to appeal out of time neither was an order granting leave to appeal out of time issued. That the respondent filed withdrawal notice dated 9<sup>th</sup> October 2024 withdrawing the notice of motion dated 4<sup>th</sup> September 2024. That the appellant subsequently filed application dated 9<sup>th</sup> October 2024 without seeking stay of execution thereby misleading the court. That a stay could not have been issued pursuant to the notice of motion dated 9<sup>th</sup> October 2024 as no prayer for stay of execution was sought. That those orders were erroneously extended on 29<sup>th</sup> October 2024. That the application dated 9<sup>th</sup> October 2024 seeking leave to file appeal out of time cannot be the basis for stay of execution. That the respondent is guilty of non-disclosure of material facts.
3. The application was opposed. The appellant filed replying affidavit sworn on 4<sup>th</sup> June 2025. She stated that she filed the memorandum of appeal in ELCA E052 OF 2024 on 4<sup>th</sup> September 2024 which was



within the 30 day period. That the said appeal was withdrawn because the memorandum of appeal was inadvertently left out at the point of scanning and uploading on the e-filing platform. She confirmed filing this appeal on 9<sup>th</sup> October 2024. That the application for leave to appeal out of time was filed simultaneously with the application for stay of execution and that both applications are dated 9<sup>th</sup> October 2024. That the application dated 4/9/2024 was filed in appeal No 52 of 2024 and not in this appeal. That the applications for leave to appeal out of time and for stay of execution were both served on the respondent's advocate.

4. Both parties filed submissions which this court has duly considered.
5. Having considered the application, response and submissions, the only issue that arise for the court's determination is whether the orders sought should issue.
6. Section 79 G of the Civil Procedure Act requires that an appeal from the subordinate court to this court be filed in 30 days of the date of the decision appealed against, provided that where there is a good and sufficient cause for delay, the appeal may be admitted out of time.
7. The record herein shows that this appeal was filed on 9<sup>th</sup> October 2024. Simultaneous with the filing of the appeal, the appellant also filed two distinct applications, both dated 9<sup>th</sup> October 2024. One application sought leave to file appeal out of time while the other application sought stay of execution of the judgment of the subordinate court. The respondent's argument that stay orders were issued on an application that did not seek stay is misplaced. The orders of 11<sup>th</sup> October 2024 were properly made in regard to the application seeking stay of execution dated 9<sup>th</sup> October 2024. That application remains undetermined as the respondent intercepted its course with the instant application. I therefore decline to set aside the said orders which will remain in force pending hearing and determination of the said application for stay of execution dated 9<sup>th</sup> October 2024.
8. The application for leave to file appeal out of time was filed earlier than the instant application. That application is yet to be heard. This court is enjoined under sections 1A and 1B of the Civil Procedure Act and section 3 of the Environment and Land Court Act to facilitate fair, expeditious, affordable, and timely justice. Parties and their counsel are obligated to assist the court in attaining the overriding objective. The respondent having filed the application dated 11/11/2024, well aware that the application for leave to appeal out of time had been filed a month earlier, was not in any way assisting the court in attaining the overriding objective. In the premises, I find and hold that the application dated 11<sup>th</sup> November 2024 was premature and intended to distract the court from attaining the overriding objective.
9. The court will not have facilitated the just, expeditious, proportionate and affordable justice if it determines the validity of the appeal when the appellant had admitted that the appeal was filed without leave of court but leave was sought. In the premises I dismiss the application dated 11<sup>th</sup> November 2024. In view of the maze created by the appellant who failed to clarify to court and the respondent's counsel the fact that he filed two applications dated the same date, but seeking different orders, I order that each party shall bear its own costs of the application herein.
10. It is so ordered.

**DATED, SIGNED AND DELIVERED AT KAKAMEGA IN OPEN COURT/VIRTUALLY THROUGH MICROSOFT TEAMS VIDEO CONFERENCING PLATFORM THIS 26<sup>TH</sup> DAY OF NOVEMBER, 2025**

**A. NYUKURI**

**JUDGE**



**In the presence of;**

No appearance for the appellant

No appearance for the respondent

Court Assistant: Delphine

