

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT NAKURU**  
**ELC CASE NO 260 OF 2017**

SERAH

WAITHERERO.....PLAINTIFF/RESPONDENT

VERSUS

JOSEPH NJURE GICHEHA.....1<sup>ST</sup> DEFENDANT/APPLICANT  
THE DISTRICT LAND REGISTRAR, NAIVASHA.....2<sup>ND</sup>  
DEFENDANT  
COMMISSIONER OF LANDS.....3<sup>RD</sup>  
DEFENDANT  
DIRECTOR OF SURVEYS.....4<sup>TH</sup>  
DEFENDANT  
DISTRICT SURVEYOR.....5<sup>TH</sup>  
DEFENDANT  
THE HONOURABLE ATTORNEY GENERAL.....6<sup>TH</sup>  
DEFENDANT  
GILLETE TRADERS AUCTIONEERS.....7<sup>TH</sup> DEFENDANT

**RULING**

1. This ruling is in respect of the 1<sup>st</sup> Defendant/Applicant's Notice of Motion application dated 12<sup>th</sup> June, 2025, which seeks the following orders:

- a) *Spent*
- b) *Spent*
- c) *THAT there be a stay of execution of the court Judgment dated 6/06/2022 pending appeal. (sic)*
- d) *That the Honourable court do grant leave to appeal out of time to the Judgement dated 2/6/2022*
- e) *That the Honourable court do give any other direction that may deem fair and just. (sic)*
- f) *THAT the costs of this application be in cause.*

2. The application is supported by the annexed affidavit of Joseph Ngiro Gicheha sworn on 12<sup>th</sup> June, 2025, where he deponed that the judgment was entered on 2<sup>nd</sup> June, 2022, and neither him nor his representatives were available and no stay orders were granted. He further deponed that he obtained the court judgment in May 2025, and urged the court to grant leave to appeal out of time.
3. Serah Waitherero, the Plaintiff filed a Replying Affidavit sworn on 23<sup>rd</sup> July, 2025, and deponed that the 1<sup>st</sup> Defendant/Applicant is making the application three years post judgment and the grounds relied on by the applicant are void on merit. She also stated that the Applicant has never paid her a single penny and that she will be prejudiced if the orders sought are granted.
4. The Plaintiff further deponed that if the court is inclined to award the prayer for stay of execution of the judgment dated 2<sup>nd</sup> June, 2022, then the 1<sup>st</sup> Defendant/Applicant must be ordered to deposit the decretal sum of Ksh 6,489,320/- in court as security.

### **1<sup>ST</sup> DEFENDANT /APPLICANT'S SUBMISSIONS**

5. Counsel for the 1<sup>st</sup> Defendant filed submissions dated 8<sup>th</sup> October, 2025, and submitted that the 1<sup>st</sup> Defendant was kept in the dark about all the processes after the judgment was entered until 15<sup>th</sup> April, 2025. Counsel submitted that the failure to file the Appeal was due to miscommunication and facts beyond the 1<sup>st</sup> defendant's knowledge. It

was counsel's submission that the Respondent stands to suffer no loss if the prayers sought are allowed.

6. Counsel submitted that the applicant has satisfied the threshold for the grant of a stay of execution pending appeal, and relied on the cases of **Stanley Kang'ethe Kinyanjui vs Tony Ketter & 5 others Nairobi Civil Application No 31 of 2012** and **Andrew Kiplangat Chemaringo vs Paul Kipkorir Kibet, Eldoret Civil Application No 91 of 2017**.

#### **PLAINTIFF/RESPONDENT'S SUBMISSIONS**

7. Counsel for the Plaintiff filed submissions dated 23<sup>rd</sup> July, 2025, and submitted that none of the conditions for grant of stay of execution has been satisfied. Counsel submitted that it is only fair and just that the 1<sup>st</sup> Defendant/Applicant pays the decretal sum to the Plaintiff in full and urged the court to dismiss the application with costs. Counsel relied on Order 42 Rule 6 of the Civil Procedure Rules and the case of **Antoine Ndiaye vs African Virtual University [2015] eKLR**.

#### **ANALYSIS AND DETERMINATION**

8. The issues for determination is whether this court has the jurisdiction to hear the Application for extension of time to file an appeal out of time.
9. The principles to be considered by the Court in exercising the discretion on whether to extend time, as delineated by Supreme Court's decision in **NICHOLAS KIPTOO ARAP KORIR SALAT Vs. INDEPENDENT**

**ELECTORAL AND BOUNDARIES COMMISSION & 7 OTHERS**  
[2014] eKLR, are as follows:

*“1. Extension of time is not a right of a party. It is an equitable remedy that is only available to a deserving party at the discretion of the Court;*

*2. A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the court;*

*3. Whether the court should exercise the discretion to extend time, is a consideration to be made on a case to case basis;*

*4. Whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the Court;*

*5. Whether there will be any prejudice suffered by the respondents if the extension is granted;*

*6. Whether the application has been brought without undue delay; and*

*7. Whether in certain cases, like election petitions, public interest should be a consideration for extending time.”*

10. A party that seeks extension of time to file an appeal out of time must satisfy the above principles, noting that it is not a right, but an equitable remedy, which is at the discretion of the court.

11. That would be the ideal case if the Applicant had filed a Notice of Appeal. In this case, the Applicant had not filed a Notice of Appeal, therefore the court that has the Jurisdiction to hear an application for leave to file an appeal out of time is the Court of Appeal.
12. I will therefore down my tools and strike out the Application with each party bearing their own costs.

**DATED, SIGNED AND DELIVERED AT NAKURU THIS 3<sup>RD</sup> DAY OF  
DECEMBER 2025.**

**M. A. ODENY**

**JUDGE**