



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT MERU**

**ELC LAND MISC. CASE NO. E035 OF 2025**

**JOSEPH NJOGU.....APPLICANT** **GICHObi**

**=VERSUS=**

**JOHN GIKUNDA MBAYA (*Sued as the Personal Representative of the Estate of the late STEPHEN MBAYA M'NTHIIRU*)...1ST RESPONDENT**

**PATRICK MURIITHI KANYARU .....2ND RESPONDENT**

**RULING**

1. Falling for determination in this ruling is the notice of motion dated 4/8/2025, brought by **Joseph Gichobi Njogu** [*the applicant*]. Through it, the applicant seeks: (i) an order enlarging the time within which to lodge an appeal against the judgment rendered on 15/5/2024 in **Nkubu SPMC E & L Case No. 111 of 2018**; and (ii) an order staying execution of the said judgment and the resultant decree, pending the hearing and determination of an intended appeal.
2. The application was premised on the grounds set out in the motion and in the applicant's supporting affidavit dated 4/8/2025 and further affidavit dated 9/9/2025. It was

canvassed through written submissions dated 9/9/2025, filed by ***M/s Wairimu Rugaita & Co Advocates***.

3. The case of the applicant is that, he filed **Meru CMC Civil Case No. 438 of 2014** against the respondents seeking: (i) an order decreeing a re-transfer of land parcel number **Nkuene/Kithunguri/1263** [the suit land] to him or, in the alternative, an order decreeing the respondents to pay him a sum equivalent to the value of the suit land; (ii) damages for trespass; (iii) a permanent injunction restraining the 1st respondent against trespassing on the suit land; and (iv) costs of the suit.
  
4. The applicant states that the 1st respondent filed a defence and counterclaim dated 12/6/2015 in which he averred that the applicant freely entered into a loan agreement dated 8/7/2014 through which he guaranteed the repayment of the loan of Kshs 300,000 advanced to the 2nd respondent by the 1st respondent and that the applicant willingly signed all transfer documents that would convey the land to the 1st respondent in the event of default by the 2nd defendant. The 1st respondent prayed for the principal sum, interest on the principal sum, and damages.
  
5. The appellant adds that the trial court heard the case and rendered a judgement dated 15/5/2024, in which it decreed: (i) cancellation of his registration as proprietor of the suit land; (ii) payment by him to the 1st respondent, of Kshs.390,000 plus interest from the date of filing the counterclaim. He contends that he was, however, not made aware of the outcome of the case. He got to know about the judgment when he was issued with a notice to show cause.

He is dissatisfied with the judgment and wishes to challenge it through an appeal.

6. In his further affidavit dated 9/9/2025, he concedes that the impugned judgment was delivered in the presence of his then advocate but he was not informed about the judgment. He denies being served with the notice to show cause twice, insisting that he came to know about the judgment in July 2025. It is his case that the delay in lodging the appeal was occasioned by lack of communication from his former advocates. He wholly blames his advocate for his failure to lodge an appeal within the prescribed time.
7. The respondent opposed the application through his replying affidavit sworn on 3/9/2025 and written submissions dated 8/10/2025, filed by **M/s Mwirigi Kaburu & Co Advocates**. The 1st respondent's case is that the impugned judgment was delivered on 15/5/2024 in the presence of the applicant's advocate. The trial court decreed cancellation of the name of the 1st respondent from the land register and further decreed the applicant to pay the 1st respondent the sum of Kshs 390,000 which was the monies that were in contention in the trial court. The trial court awarded the 1st respondent interest on the above sum at court rate from the date of filing the counterclaim.
8. The 1st respondent adds that subsequent to that, on 18/12/2024, he caused a notice to show cause to be served on the applicant. He also caused a second notice to show cause to be served on the applicant on 8/5/2025. He states that the sum of Kshs 829,586 contained in the notice to show cause is comprised of the decretal sum together with interest and costs.

9. The 1st respondent argues that the applicant has failed to tender a satisfactory explanation for the delay of 16 months. He further argues that the applicant has failed to meet the threshold for an order of stay of execution pending the hearing and disposal of an appeal.
10. In his further affidavit dated 25/9/2025, the 1st respondent exhibited an official search showing that the applicant executed the decree of the trial court through cancellation of the registration and title of the 1st respondent and issuance of a new title to the applicant on 20/11/2024. The 1st respondent faulted the applicant for not being truthful, contending that the applicant lied to the court that he came to know about the judgment in July 2025 yet he executed the resultant decree in November 2024. The 1st respondent urged the court to reject and dismiss the application.
11. The court has considered the application; the response to the application; and the parties' respective submissions. The court has also considered the relevant legal frameworks and jurisprudence. The following are the two key issues that fall for determination in this ruling: (i) Whether the criteria for enlargement of time for lodging an appeal in this court has been met; and (ii) Whether the criteria for granting an order of stay of execution by this court pending the hearing and disposal of an appeal in the court has been met. I will analyse and dispose the two issues sequentially in the above order
12. The limitation period for lodging an appeal before this court against decisions of lower courts is contained in **Section**

**16A** of the **Environment and Land Court Act** and **Section 79G** of the **Civil Procedure Act**. The frameworks in the two statutes provide for a limitation period of 30 days from the date of delivery of the impugned decision. The two frameworks vest in this court discretionary jurisdiction to enlarge the limitation period. The legislated guiding principle in the two frameworks is that the discretionary jurisdiction should be exercised on the basis of good and sufficient cause.

- 13.** The general jurisprudential principles that guide our courts whenever invited to exercise the above jurisdiction were outlined by the Supreme Court of Kenya in the case of ***Nicholas Kiptoo Arap Korir Salat v Independent electoral and Boundaries Commission & 7 Others (2014) eKLR*** as follows:

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

***2. A party who sought extension of time had the burden of laying a basis for it to the satisfaction of the court;***

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

***4. Whether there was a reasonable reason for the delay, which ought to be explained to the satisfaction of the court;***

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

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

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

- 14.** In ***Mukora Mwangi v Charles Gichina - Civil Application No. Nai 255 of 1997***, the **Court of Appeal** summed up the following relevant principle:

***“It is now well settled that the decision whether or not to extend the time for appealing is essentially discretionary. It is also well-settled that, in general, the matters which this court takes into account in deciding whether to grant an enlargement of time are: first, the length of the delay; secondly, the reason for the delay; thirdly (possibly), the chances of the appeal succeeding if the application is granted; and fourthly, the degree of prejudice to the respondent if the application is granted.”***

- 15.** What is the length of delay in the present application? The judgment that is the subject of the present application was rendered in the presence of the applicant’s advocate on 15/5/2024. On 20/11/2024, the applicant executed the segment of the resultant decree that was in his favour by causing the registration and title of the 1st respondent to be cancelled and a fresh title to be issued to him (to the applicant). He subsequently brought the present application on 4/8/2025. This is a period of over 15 months. Clearly, this is inordinate delay, moreso, taking into account the fact

that Parliament legislated a limitation period of thirty (30) days.

- 16.** Has the applicant tendered a satisfactory explanation/reason for the delay? The applicant contends that he was not aware of the judgment that was rendered in the presence of his advocate until July 2025. He, however, executed the judgment in November 2024. He concealed the fact that he had executed the segment of the decree that was in his favour. Unluckily for him, the 1st respondent was able to demonstrate that he was untruthful by tendering an official search showing that he [the applicant] executed the segment of the decree that was in his favour in November 2024. The fact that the applicant's advocate was present at the time of delivery of judgment; and that the applicant proceeded to execute the judgment in November 2024, is clear evidence that the applicant was all along aware of the judgment and the decree of the trial court. He is not truthful.
- 17.** Secondly, courts have been categorical that it is not enough for a litigant to simply blame his advocate for his failure to comply with statutory timelines; he must place before court cogent and credible evidence demonstrating that he made concerted efforts and exercised proper due diligence. He must tender evidence demonstrating follow-ups made with his advocate and with the court in pursuit of his case. [See the Supreme Court of Kenya pronouncement in ***Mohamed v Diamond Trust Bank Kenya Limited & another (Application No. E035 of 2024) (2025) KESC 17 KLR (11 April 2025)***].
- 18.** Apart from lying to the court that he was unaware of the judgment and concealing the fact that he had executed part

of the decree in November 2024, the applicant failed to tender evidence of the follow-ups and the due diligence that he exercised in pursuit of his interest in the case.

- 19.** On chances of the appeal succeeding, the applicant conceded that he guaranteed the repayment of the loan and he pledged his title as security. It was for this reason that while returning the land to the applicant, the trial court decreed him to settle the debt. He has not demonstrated that they have serviced the loan. I highly doubt that a court of both law and equity would allow the applicant to have his title, which he pledged as security, and at the same time free him from meeting his obligations as a guarantor.
- 20.** On likely prejudice, the applicant has come to court for enlargement of time for appealing after he has fully executed the segment of the judgment that favoured him. Having fully enjoyed the fruits of the judgment, he wants to block the 1st respondent against enjoying the other segment of the judgment. Clearly, allowing the plea for enlargement of time in the above circumstances will be prejudicial to the 1st respondent.
- 21.** For the above reasons, the court comes to the finding that the application under consideration does not meet the criteria for enlargement of time for lodging an appeal to this court.
- 22.** The applicant having failed to satisfy the criteria for enlargement of time for lodging an appeal, it follows that there is no basis for granting an order of stay of execution pending disposal of an appeal. Put differently in the absence of an appeal, the plea for an order of stay of execution

pending the hearing and determination of an appeal automatically fails.

- 23.** The result is that the application dated 4/8/2025 is rejected and dismissed for lack of merit.
- 24.** On costs, no proper grounds have been demonstrated to warrant a departure from the general principle in **Section 27** of the **Civil Procedure Act**, to the effect that costs follow the event. Consequently, the applicant will bear costs of the miscellaneous application/suit. ▶

**DATED, SIGNED AND DELIVERED AT MERU THIS 2ND DAY OF DECEMBER, 2025.**

**B M EBOSO [MR]  
JUDGE**