



**Mbogo v Mbogo (Environment and Land Appeal E016 of 2021)  
[2025] KEELC 5776 (KLR) (30 July 2025) (Ruling)**

Neutral citation: [2025] KEELC 5776 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT EMBU  
ENVIRONMENT AND LAND APPEAL E016 OF 2021**

**A KANIARU, J  
JULY 30, 2025**

**BETWEEN**

**ARTHUR MUNENE MBOGO ..... APPELLANT**

**AND**

**VERONCAH RWAMBA MBOGO ..... RESPONDENT**

**RULING**

1. This ruling relates to two applications – one, a notice of motion dated 10/11/2022 and filed on 14/11/2022 and, two, a notice of motion dated 1/2/2023 and filed on 2/2/2023 [the two applications are hereinafter “first and second applications” respectively]. Both were filed by the same applicant – Arthur Munene Mbogo – and are against the same respondent – Veronica Rwamba Mbogo. The two parties are prospective appellant and respondent in an appeal sought to be filed before this court.
2. The first application came with six [6] prayers, two [2] of which – prayers 1 and 2 – were for consideration at the ex parte stage. The two were considered as such on 14/11/2022 and the court declined to grant them.
3. On 16/2/2023, counsel for applicant withdrew prayers 1, 2 and 3 in the first application. The court marked them withdrawn. In retrospect, it is clear that prayers 1 and 2 were not available for withdrawal, as both were spent prayers that had been considered earlier at the ex- parte stage. The only prayer for withdrawal was the third one and this one was therefore properly withdrawn. The prayers remaining for consideration are No’s 4, 5 and 6 and all are itemized in the application thus:

Prayer 4: This honourable court be pleased to grant the appellant leave to appeal out of time.

Prayer 5: The draft memorandum of appeal annexed herein dated 10/11/2022 be deemed as properly filed.

Prayer 6: Cost of this application be in the cause.



4. The second application came with four prayers sequenced as [a], [b], [c] and [d] respectively. Prayers [a] and [b] were meant for ex parte stage. They are therefore not for consideration now. The prayers for consideration are therefore [c] and [d], and they are as follows:

Prayer [c] That pending the hearing and determination of this appeal, the judgement/decree of the Business Premises Rent Tribunal dated 30/9/2022 in Tribunal Case No. 40 of 2017 – Embu, for eviction of the Appellant/Applicant from Plot No. Embu/Municipality/1112/325, be stayed.

Prayer [d] That cost be provided for.

5. A precis of what is sought for in the two applications would show that the applicant is seeking to be allowed to appeal out of time against the judgement of the Business Premises Rent Tribunal delivered on 30/9/2022 and as he does so, he would like the execution of the same judgement and/or decree arising from it stayed. He would also wish that the court makes provision for costs regarding the two applications.
6. The grounds advanced in support of the prayers sought include: That the appellant filed a reference before the Business Premises Rent Tribunal seeking to be heard. He wanted to persuade the tribunal to make a finding that here is no Landlord – Tenant Relationship between him and the respondent. But the judgement that issued seemed to suggest that there was such relationship. It was alleged that the tribunal did not even have jurisdiction because the issues involved are in the domain of succession matters and the property in dispute belongs to the estate of the late Gerishon Mbogo. That the applicant is allegedly one of the administrators of the aforesaid estate and therefore has authority to deal with the estate.
7. The two applications came with supporting affidavits which provide some history and background surrounding the matter. They at the same time expound on the grounds on which the two applications are anchored.
8. The respondent filed replying affidavits in response to the two applications. The response to the first application was filed on 21.2.2023. The response to the second application was similarly filed on the same date. In the responses, the respondent makes it clear that the disputed property is her own inheritance from the estate of her late husband – Gerishon John Mbogo. The applicant is said to be operating a business there but he does not want to pay rent. The applicant himself being a son of Gerishon, also got his own inheritance, which comprises of what used to be the respondent’s matrimonial home and which he is utilizing to gain full benefits. But he is said to be hell-bent on reaping from the disputed property to the detriment of the respondent.
9. The respondent further deposed that there was a preliminary objection raised before the tribunal which mainly focused on the issue of Landlord-Tenant Relationship and which the applicant lost. The applicant is said to have preferred an appeal which he failed to pursue to its logical conclusion. The respondent thinks the appeal was dismissed. The entire matter then went to full hearing before the tribunal. The judgement that ultimately came from the tribunal was in respondent’s favour and the applicant was ordered to vacate the disputed property. The appeal the applicant now intends to file is said to be an abuse of the court process and brought in bad faith. It is meant, the respondent deposed, to frustrate her and interfere with her enjoyment of the disputed property. This court was urged to dismiss the two applications with cost.
10. The two applications were canvassed by way of written submissions. The applicant’s submissions are dated 7/6/2024. The applicant submitted, inter alia, that the intended appeal raises serious questions of law and facts and this is something that can be gleaned from the memorandum of appeal. The delay



in filing the appeal was said to have arisen because the Business Premises Rent Tribunal did not supply proceedings on time. It was submitted that the respondent will not suffer prejudice if the application is allowed.

11. The disputed property was said to be part of the estate of the late Gerishon John Mbogo and is the subject of on-going succession proceedings at the High Court, Nairobi, where the applicant is said to be one of the administrators. The respondent was faulted for saying that she inherited the disputed property by dint of a distribution that took place following conclusion of Succession Cause No. 989 of 1999, High Court, Nairobi. The applicant says that the certificate of confirmation of grant issued in that succession cause was revoked via a High Court Ruling dated 19.12.2017. The respondent's averments were therefore said to be untrue.
12. There was then a shift in the applicant's submissions in order to focus on the applicable law. In this regard, the decided cases of *Mombasa County Government v Kenya Ferry Services & Another* [2019] eKLR, *Omar Shurie v Marian Rashe Yafar* [2020] eKLR and *Faith Jerop Kiu & Another v Patrick Wanyonyi Khaemba & 3 others: [Civil Appeal [Application] E270 of 2021] KECA 318 [KLR]*, among others, were cited and quoted as deemed relevant and/or appropriate. What is manifest from these authorities is that the extension of time to file appeal is not an automatic right of a party. It is an equitable remedy only available to a deserving party. Such a deserving party has the onus of satisfying the court regarding the merits of his application in order to have time extended. Where delay is alleged, it should be well explained. The court is also required to consider whether there is prejudice to be suffered by the other side and whether the application to extend time has been brought without unreasonable delay. Each application is supposed to be considered on its own merits and in situations where public interest is a critical factor, that too should be considered. The remedy is essentially discretionary. Overall, the interests of justice should be paramount in the court's mind while handling an application to extend time.
13. In the application under consideration, the intended appeal is said to be raising a crucial jurisdictional issue which the court ought to determine. The court was therefore urged to allow the application.
14. The respondent's submissions are dated 18/6/2024. The respondent started by pointing out that the prayer for stay of execution pending appeal should not be granted as there is no appeal as yet. It was further submitted that the appellant is abusing the court process as he has filed two applications seeking orders of stay. As regards the application seeking to file appeal out of time, it was submitted that no reason is given why there was delay. The applicant was said to be duty-bound to give "good and sufficient cause" as to why the appeal was not filed on time. Further, it was submitted that the applicant "hasn't given any reason why he is seeking stay of execution and eviction whereas there is no appeal pending" and also that he "hasn't offered any security for the performance of the decree as per the provisions of Order 42 Rule 6."
15. The respondent then cited the case of *Sokoro Savings & Credit Co-operative Society Ltd. v Mwamburi: [Civil Application No. E032 of 2022] [2023] KECA 381 KLR* which cited with approval the case of *Nicholas Kiptoo Arap Korir Salat v Independent Electoral and Boundaries Commission* [2014] eKLR where the factors relevant for consideration in order to grant or decline to grant extension of time to file appeal were outlined. Ultimately, this court was urged to dismiss the application.
16. I have considered the two applications, the responses made to them, rival submissions, and the other material on record. In my view, the issue to determine is whether or not the merits of the two applications have been demonstrated. I will first address the issue of extending time to file an appeal.



The statutory anchor for extending time to file an appeal is to be found in Section 79 [G] of the *Civil Procedure Act* [Cap 21] which states as follows:

“79 G.

Every appeal from a subordinate court to the High Court shall be filed within a period of thirty days from the date of the decree or order appealed against, excluding from such period any time which the lower court may certify as having been requisite for the preparation and delivery to the appellant of a copy of the decree order:

Provided that an appeal may be admitted out of time if the appellant satisfies the court that he had good and sufficient cause for not filing the appeal in time.” [emphasis: mine]

17. Arising from the above provisions are various judicial pronouncements which clearly state the factors to consider before time is extended or enlarged. In *Thuita Mwangi v Kenya Airways Ltd.* [2003] eKLR the factors to be considered were stated to be:

- i. The period of delay.
- ii. The reason for the delay.
- iii. The arguability of the appeal.
- iv. The degree of prejudice which could be suffered by the respondent if extension is granted.
- v. The importance of compliance with time limits to the particular litigation in issue.
- vi. The effect, if any, on the administration of justice or public interest if any is involved.”

18. And in *Edith Gichungu Koine v Stephen Njage Thoithi* [2014] eKLR, Odek JA [as he then was] rendered himself as follows while making reference to some of the factors which the court should consider:

“Nevertheless, it ought to be guided by consideration of factors stated in many previous decisions of this court including, but not limited to, the period of delay, the reasons for the delay, the degree of prejudice to the respondents if the application is granted, and whether the matter raises issues of public interest, amongst others.”

19. Both sides in this matter articulated the applicable law well with the applicant for instance citing and even quoting Mombasa County Government’s case [supra] Omar Shurie’s case [supra] and Faith Jerop Kiu’s case [supra], among others. The respondent on her part made reference Sokoro Savings & Credit Co-operative Society Ltd case [supra]. All these cases outlined the factors that I have already stated.

20. I think it is useful to add that it is also necessary to consider whether allowing the application for extension of time resonates well with the overriding objective in civil cases which require that the court should aim at achieving the just, expeditious, proportionate, and affordable resolution of disputes.

21. In the application under consideration, the period of delay seem to be fourteen [14] days and the applicant has explained it by saying that the Business Premises Rent Tribunal did not supply him with proceedings on time. I expected the respondent’s side to offer a specific rebuttal to this explanation but none was offered. Instead, there was just a general averment that delay was not explained. The applicant



also said that his appeal is arguable as he is questioning the tribunal's jurisdiction to handle the matter given that there was allegedly no Landlord-Tenant Relationship between himself and the respondent. Further, the applicant's position is that this matter properly belongs in the domain of Probate and Administration Court as the property in dispute belongs to the estate of his late father and succession proceedings are still going on.

22. My considered view is that the reasons given by the applicant are plausible. While one cannot axiomatically assert that the intended appeal will succeed, it is equally difficult to deny convincingly that the appeal is not arguable. I need also to point out that I do not see any prejudice likely to be suffered by the respondent which is not compensable with costs or damages. I am persuaded therefore that the prayer for extending time should be granted.
23. The other crucial prayer is that of stay of execution. Stay of execution pending appeal is provided for in Order 42 Rule [6] of Civil Procedure Rules, 2010. That provision is as follows:

“[1] No appeal or second appeal shall operate as a stay of execution or proceedings under a decree or order appealed from except in so far as the court appealed from may order but, the court appealed from may for sufficient cause order stay of execution of such decree or order, and whether the application for such stay shall have been granted or refused by the court appealed from, the court to which the appeal is preferred shall be at liberty, on application being made, to consider such application and to make such order thereon as may to it seem just, and any person aggrieved by an order of stay made by the court from whose decision the appeal is preferred may apply to the appellate court to have such order set aside.

[2] No order of stay of execution shall be made under sub rule 1 unless;

[a] The court is satisfied that substantial loss may result to the applicant unless the order is made and that the application has been made without unreasonable delay; and

[b] Such security as the court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the applicant.”

24. In *RWW v EKW* [2019] eKLR, the purpose of stay of execution was stated as follows:

“The purpose of an application for stay of execution pending an appeal is to preserve the subject matter in dispute so that the rights of the appellant who is exercising the undoubted right of appeal are safeguarded and the appeal if successful, is not rendered nugatory. However, in doing so, the court should weigh this right against the success of a litigant who should not be deprived of the fruits of his/her judgement. The court is also called upon to ensure that no party suffers prejudice that cannot be compensated by an award of costs. Indeed, to grant or refuse an application for stay of execution pending appeal is discretionally. The court when granting the stay however, must balance the interests of the appellant with those of the respondent.”

25. Further, the court stated as follows in the case of *Absalom Dova v Tarbo Transporters* [2013] eKLR.

“The discretionary relief of stay of execution pending appeal is designed on the basis that no one would be worse off by virtue of an order of the court; as such order does not introduce



any disadvantage, but administers the justice that the case deserves. This is in recognition that both parties have rights; the appellant to his appeal which includes the prospects that the appeal will be rendered nugatory; and the decree holder to the decree which includes the full benefits under the decree. The court, in balancing these two competing rights, focus on their reconciliation...”

26. In the matter at hand, the respondent submitted, inter alia, that as there is no appeal pending, the order of stay of execution should not be granted. This court does not see it that way. The prayer for filing appeal out of time and that of stay of execution are being considered together. Clearly, it is the intention and desire of the applicant that if the prayer to extend time is granted, he is also contemporaneously granted a stay of execution in order that the status quo may be maintained. It appears clear to me that the property in dispute is one in which the respondent is renting out some portions while the applicant is operating a business on the other portion. It is clear to me that it is proper to maintain the status quo for the period that the dispute between the two parties is running in court. Without doubt, the applicant will make losses if he is forced to vacate the premises. Given that the court has found it fit to extend time for filing the appeal, it is also important in my view that he gets an order of stay of execution. I say this because I don't see any prejudice so serious that the respondent will suffer which cannot be compensated. If the appeal on the other hand turns out successful while the applicant is out of the premises, he will have lost business and the goodwill that goes with it. He will be forced to start afresh. My considered view therefore is that the prayer for stay of execution is appropriate in the circumstances of this case.
27. It is clear that the other prayers in the applications – like deeming the memo appeal as properly filed and/or making provision for cost – are dependent on the two main prayers that I have already considered.
28. But I need to say something about security for performance of decree or order. This is never a choice for the court to make or not to make. It is also never a choice for a party who wins an application for stay order to avoid. It is a mandatory requirement of the law that security has to be provided by the party enjoying an order of stay.
29. It is clear now that the court is minded to allow the applications. The order for extension of time to file appeal is granted. The order for stay of execution is also granted. In addition, the applicant is ordered to pay deposit Kshs. 100,000/= [one hundred thousand shillings only] as security to subsist during the pendency of the appeal. That should be done within sixty [60] days from the delivery of this Ruling failing which the order of stay shall automatically lapse.
30. As regards the issue of cost, I realize that the disputing parties are close family members. I therefore choose to make no order as to costs.

**RULING DATED, SIGNED AND DELIVERED ONLINE AT KITUI THIS 30<sup>TH</sup> DAY OF JULY, 2025.**

**A. KANIARU**

**JUDGE- ENVIRONMENT & LAND COURT, KITUI**

In the presence of;

Ms. Kimanthi for Okwaro for Applicant

Ms. Kamochu for Ms. Muthoni Ndeke for Respondent

Appellant – absent



Respondent - respondent

