



Japhet v Rwito & another (Environment and Land Miscellaneous Case E047 of 2025) [2025] KEELC 18364 (KLR) (15 December 2025) (Ruling)

Neutral citation: [2025] KEELC 18364 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT AND LAND MISCELLANEOUS CASE E047 OF 2025
BM EBOSO, J
DECEMBER 15, 2025**

BETWEEN

BENSON GITONGA JAPHET APPLICANT

AND

ROBERT KIRIMI RWITO 1ST RESPONDENT

EDWARD GICHURU RWITO 2ND RESPONDENT

RULING

1. Falling for determination in this ruling is the application dated 17/9/2025, brought by Benson Gitonga Japhet. Through it, the applicant seeks an order enlarging the time within which to lodge an appeal against the Judgment rendered by the Senior Resident Magistrate Court at Nkubu [Hon R. Ongira-SRM] on 10/7/2025 in Nkubu SPMC E & L Case No. E062 of 2024. In addition, the applicant seeks an order staying execution of the decree arising from the said Judgment. The two key questions to be answered in the ruling are:

- (i) Whether the criteria for granting an order enlarging time for lodging an appeal in this court has been met; and
- (ii) Whether the criteria for granting an order staying execution of a decree of the lower court pending the hearing and disposal of a consequential appeal to this court has been satisfied.

I will summarize the parties' respective cases before I analyse and dispose the two issues.

- 2. The application was premised on the grounds outlined in the application and in the applicant's affidavit dated 17/9/2025. Parties opted to solely rely on their respective affidavits and did not tender written submissions on the application.
- 3. The case of the applicant is that the trial court rendered its judgment on 10/7/2025. He was never served with the plaint relating to the suit in the trial court. He came to know about the suit when he was



served with the decree on 4/9/2025. On 9/9/2025, he applied for certified copies of the proceedings for the purpose of lodging an appeal in this court. He was supplied with certified and typed proceedings on 12/9/2025. By the time he was supplied with typed and certified copies of the proceedings, the time for lodging an appeal had lapsed.

4. The respondents opposed the application through an affidavit sworn on 22/10/2025 by Robert Kirimi Edward. His case is that he goes by the name Robert Kirimi Edward and not Robert Kirimi Rwito. They [the respondents] had a preceding succession dispute with the applicant's father, the late Japhet Nkari Mburugu, over the estate of the late Kirianki Kanana who was the previous proprietor of the suit land, Nkuene/U-Mikumbune/271. The succession court disposed the succession dispute and vested the suit land in the names of Agnes Muthoni Kirima, Kureta Kathure John and Mary Karambu M'Irangu in varying shares. Subsequently, the suit land was subdivided into four (4) parcels, among them, parcel number Nkuene/U-Mikumbune 2314. The said parcel was subsequently transferred to the 1st respondent by Mary Karambu M'Irangu while parcel number Nkuene/U-Mikumbune/2311 was transferred to the 2nd respondent who subsequently transferred it to the 1st respondent.
5. The respondents add that subsequent to that, they initiated Nkubu SPMC E & L Case No. E062/2024 seeking, among other reliefs, an eviction order against the applicant. They duly served the applicant with relevant court papers on 2/9/2024 but the applicant elected not to enter appearance and contest the suit. In addition, on 27/10/2024, they served the applicant with a ruling notice. They contend that the applicant has all along been aware of the case in the trial court. They fault the applicant for not applying to the lower court to set aside its ex-parte decision. They urged the court to reject the application.
6. The court has considered the application and the response to the application. Parties did not tender submissions. They opted to rely on their respective affidavits. The two key issues that fall for determination were outlined in the opening paragraph of the ruling. I will proceed to analyse and dispose them.
7. Does the application satisfy the criteria for enlargement of time for lodging an appeal in this court? The limitation period for lodging an appeal in this court is defined under Section 16A of the Environment and Land Court Act. It is also defined under Section 79G of the Civil Procedure Act. Both statutes provide for a limitation period of 30 days from the date when the impugned decision is rendered. Both statutes enjoin this court to exercise the discretionary jurisdiction only when the applicant has demonstrated good and sufficient cause for not filing the appeal on time.
8. 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.”
9. 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.”
10. Has the applicant satisfied the above criteria? On the length of the delay, the applicant alleges that he learnt about the suit in the lower court on 4/9/2025. He applied for copies of proceedings on 9/9/2025. He received copies of the proceedings on 12/9/2025. He brought the present application on 18/9/2025. Barring any other relevant consideration, the above delay does not appear to be inordinate.
 11. Has the applicant tendered a satisfactory explanation for the delay? I do not think so. The applicant contends that he was never served with relevant court papers and that he was not aware of the suit in the lower court until 4/9/2025. There is, however, no evidence that the applicant has in any way moved the trial court to vacate the alleged ex-parte proceedings and ex-parte decision through a formal application for orders setting aside the ex-parte proceedings and decision. The starting point in a dispute of this nature is to formally move the trial court to set aside the ex-parte proceedings and the ex-parte decision. That is the first remedy available to the applicant. He has not exhausted that remedy.
 12. The same principle would apply to the question as to whether the applicant has demonstrated that he has arguable grounds of appeal. The applicant has approached the appellate court on the principal ground that he was never served with relevant court papers. He has, however, not exhausted the remedies available to him in the lower court. In the circumstances, I do not think he has demonstrated that he has arguable grounds of appeal.
 13. On likely prejudice, the applicant has not demonstrated to this court the basis upon which he is entitled to be on the suit land, which is currently registered in the name of the 1st respondent. He has not demonstrated to this court that the succession court has vacated the vesting orders that it issued in relation to the suit land. He has not demonstrated why a land court should not defer to the vesting order of the succession court.
 14. For the above reasons, the court finds that the application under consideration does not satisfy the criteria for enlargement of time for lodging an appeal in this court.
 15. Has the application met the criteria for granting an order for stay of execution pending the hearing and disposal of an appeal by this court? The plea for an enlargement order having failed, it automatically follows that there is no pending appeal upon which an order of stay of execution would be hinged. Consequently, the plea for an order of stay of execution pending the hearing and disposal of an appeal automatically fails.
 16. Lastly, on costs, the general principle in Section 27 of the Civil Procedure Act is that costs follow the event. No special circumstances have been demonstrated to warrant a departure from the above general principle. The result is that the applicant shall bear costs of the miscellaneous application.



17. In the end, the application dated 17/9/2025 is rejected and dismissed. The applicant shall bear costs of the application.

DATED, SIGNED AND DELIVERED AT MERU THIS 15TH DAY OF DECEMBER, 2025.

B M EBOSO [MR]

ELC JUDGE

