REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT CHUKA

ELC MISC APPLICATION NO. E015 OF 2025

WILLIAM GICHUNGU KIAMBI……..
…..APPLICANT

=VERSUS=

AMIS ENERGIES LTD……..
RESPONDENT

RULING

1. Through the notice of motion dated 4/8/2025, **William Gichungu Kiambi** seeks: (i) an order enlarging the time for lodging an appeal against the ruling rendered on 21/11/2024 in **Marimanti PMC E & L Case No E013 of 2022**; (ii) an order deeming the exhibited draft memorandum of appeal as the applicant's duly filed memorandum of appeal; (iii) an order staying execution of the ruling dated 21/11/2024 and all the consequential orders, pending the hearing and disposal of the intended appeal; and (iv) an order providing for costs of this miscellaneous application.

2. The application is premised on the grounds outlined in the motion; in the applicant's supporting affidavit dated 4/8/2025; and in the applicant's supplementary affidavit

dated 22/9/2025. The application was canvassed through written submissions dated 19/9/2025, filed by ***M/s Makena Mbogo & Co Advocates.*** The case of the applicant is that the trial court entered interlocutory judgment against him in **Marimanti PMC E & L Case No E013 of 2022** and conducted an ex-parte hearing of the suit on 18/4/2024. He subsequently filed in the said court an application dated 3/7/2024 seeking an order setting aside the interlocutory judgment and the ex-parte proceedings. The trial court rendered a ruling on the said application on 21/11/2024 in which it rejected the application.

3. The applicant states that he did not file an appeal in time because, for unknown reasons, his advocates, ***M/s Mugiira & Associates,*** failed to attend court on the day scheduled for ruling and did not appraise him on the ruling. He got to know about the ruling when he overheard the "respondent" boasting that he had won the case. He argues that the mistake of his counsel should not be visited on him.

4. The respondent opposed the application through a replying affidavit dated 14/8/2025 and written submissions dated 26/9/2025, filed by ***M/s Mithega & Kariuki Advocates.*** The case of the respondent is that the applicant has not explained the delay of 8 months. They argue that it is a lame excuse for the applicant to blame his former advocate, emphasizing that a case belongs to the litigant and that it was upon the applicant to do follow-ups on his case.

5. The respondent further argues that the application under consideration has been overtaken by events because

subsequent to the ruling of 21/11/2024, the trial court rendered a final judgment in the case on 3/7/2025. They add that the said judgment was rendered in the presence of the applicant's advocate.

6. Emphasizing that the applicant was duly served with summons but elected not to contest the suit, the respondent argues that the applicant has failed to demonstrate that he has an arguable appeal. The respondent adds that the only issue the court could look at and interrogate was whether the applicant had an arguable defence but the applicant failed to exhibit the draft defence. They urge the court to reject the application.

7. 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 two issues that fall for determination in this ruling are: (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 pending the hearing and disposal of an appeal in this court has been satisfied. I will dispose the two issues sequentially in the above order.

8. The limitation period for lodging an appeal in 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.

9. The general jurisprudential principles that guide our courts whenever invited to exercise jurisdiction to enlarge time 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:

> ***a) 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;***
> ***b) A party who seeks extension of time has the burden of laying a basis for it to the satisfaction of the court;***
> ***c) Whether the court ought to exercise the discretion to extend time, is a consideration to be made on a case to case basis;***
> ***d) Whether there is a reasonable reason for the delay, which ought to be explained to the satisfaction of the court;***
> ***e) Whether there would be any prejudice suffered by the respondents if the extension was granted;***
> ***f) Whether the application had been brought without undue delay; and;***

g) Whether in certain cases, like election petitions, public interest ought to be a consideration for extending time.

10. 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."***

11. Does the application meet the above criteria? The impugned ruling was rendered on 21/11/2024. The application for enlargement of time was filed on 6/8/2025. There was a delay of about 8 months. This is certainly a long delay, taking into account that Parliament provided for a limitation period of 30 days. The scenario is made worse by the fact that the applicant brought the application after the trial court rendered its final judgment in the case on 3/7/2025. Clearly, the delay is inordinate.

12. The explanation tendered by the applicant is that for unknown reasons, his advocate did not attend court during delivery of the ruling and did not inform him about the ruling. On its part, the respondent argues that the delay has been inordinate and that the application has been overtaken by events because the trial court ultimately rendered a judgment in the matter on 3/7/2025 in the presence of the applicant's advocate.

13. The applicant has not told the court the steps he took in terms of follow-ups. The application giving rise to the impugned ruling was filed in July 2024. The impugned ruling was rendered on 21/11/12024. The application giving rise to the impugned ruling sought to set aside interlocutory orders and proceedings that had been made/undertaken because of the applicant's failure to respond to summons to enter appearance. It was, therefore, the applicant's cardinal duty to demonstrate to this court that as a litigant, he diligently pursued the prosecution of the application and made follow-ups to know the outcome of the application. He has not done that.

14. Similarly, the applicant has not disclosed to the court the precise date when he learnt about the ruling and the identity of the person whom he allegedly overheard boasting that he had won the case. The respondent is a body corporate; yet the applicant wants this court to believe that he overheard the body corporate (*the respondent*) boasting that it had won the case against him. This cannot be true.

15. The fact that the applicant's advocate attended court on 3/7/2025 during delivery of the final judgment is a clear indication that, through his advocate, the applicant was aware of the ongoings. The court is, in the circumstances, not satisfied that a proper explanation has been tendered to reasonably account for the delay of 8 months.

16. Has the applicant demonstrated that he has an arguable

appeal? The applicant exhibited a draft memorandum of appeal but did not bother to exhibit the application and the evidential materials that he placed before the trial court in support of the application that culminated in the impugned ruling. He did not exhibit the affidavit of service which the trial court relied on. He did not exhibit his draft defence. Consequently, the court has been denied the opportunity to properly evaluate the question as to whether the applicant has arguable grounds of appeal.

17. On likely prejudice, the final judgment has already been rendered. Due to the inordinate delay by the applicant, the application has, clearly, been overtaken by events.

18. For the above reasons, the court is not satisfied that the application has met the criteria for enlargement of time for lodging an appeal in this court.

19. In the absence of leave to lodge an appeal out of time, the plea for an order of stay of execution pending the hearing and disposal of the intended appeal fails.

20. In the end, the application dated 4/8/2025 fails and is dismissed for lack of merit. In tandem with the general

principle in **Section 27** of the **Civil Procedure Act,** the applicant shall bear costs of the miscellaneous application/suit.

DATED, SIGNED AND DELIVERED AT CHUKA THIS 11TH DAY OF DECEMBER, 2025.

B M EBOSO [MR]

ELC JUDGE

In the Presence of:

Applicant - Absent

Mr. Mugwe for the Respondent

Court Assistant – Mr. Mwangi