

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYANDARUA
MISC ELC NO E004 OF 2025

JOSEPH KIIRU
MWANGI.....PLAINTIFF

VERSUS

JOHN KIMARI MURAGURI.....1ST DEFENDANT
NYANDARUA COUNTY LAND REGISTRAR.....2ND DEFENDANT

RULING

In the Application dated 10/5/2025, the Applicant prays for: -

1. Spent.
2. That pending the Hearing and determination of this Application the Court be pleased to stay the execution of the Judgment and Decree in Engineer Senior Principal Magistrate's Court, ELC case No. E025 OF 2022.
3. That the Court be pleased to grant the Applicant leave to lodge an Appeal against the entire Judgment and Decree in Engineer Senior Principal Magistrate's Court ELC case No E025 of 2022 out of time.
4. That the Court be pleased to stay the Execution of the Judgment and Decree pending the hearing and determination of the intended Appeal.

5. That the Honourable Court be pleased to allow the Applicant furnish the Court with a reasonable security.
6. That the Application be heard *inter partes* on such a date and time as this Honourable Court may direct.
7. That the costs of the Application do abide the outcome of the intended Appeal.
8. Any other order and/or direction the Court may deem fit in the circumstances.

On the face of the Application and in the Affidavit in support of the Application sworn on even date, the Applicant explains that Judgment in Engineer Senior Principal Magistrate's Court in ELC 025 OF 2022 was delivered on 3/12/2024 where he was acting in person. His suit was dismissed with costs and the 1st Respondent's counter-claim was successful. He was aggrieved and he attempted to lodge an Appeal in person but due to distance to the Court since he resides in Lamu County he was unable to file it. He realized later that the Appeal he thought he had filed had not been so filed.

The Judgment of the Lower Court was delivered on 3/12/2024 therefore this Application was filed without inordinate delay. He further says that the intended Appeal has high chances of success. He is ready to deposit security as ordered by the Court and that the Respondents would not suffer any prejudice should the Application be granted.

I start from the point that it is not true that the Respondents would not suffer prejudice should the current Application be granted. The

Judgment against which the Applicant intends to appeal was pronounced by the Engineer Senior Principal Magistrate on 3/12/2024 more than a year ago and the Respondents must have been assured by the lapse of time that they are not expecting any Appeal to be filed against them. And although it is not a requirement that an intending Appellant serves the Respondent with a Notice of Appeal it would be unfair for one to stay quiet for so long only to wake up one morning and without good reasons, file an Application for extension of time to appeal. This would be against the legitimate expectation of the Respondent. I would not wish to lock out anybody from appealing against a Judgment of the lower Court and more so in a matter such as this one where the effect of doing so would be to deny someone his day in Court. But failure to challenge the Decision of the lower Court has not been sufficiently explained.

Also, it is not indicated in the Judgment that the Applicant did not participate in the Hearing of the case in the Lower Court. This would have been clear if the Applicant had attached the proceedings of the Lower Court. As it is now, it is not shown that the Applicant never gave evidence in the Lower Court. This is not a Court of conjecture. We cannot assume.

As to the Application being brought in Court without inordinate delay, although a delay of 1 year is not very unreasonable and inordinate, I would have excused the Applicant so that I give him his day in Court. But due to the reasons I have explained above, this

Application cannot see the light of day and the same is accordingly dismissed.

And since the Respondents did not participate in the Hearing of this Application nor did they make any response to the same, I will not condemn him to costs.

Ruling dated, signed and delivered at Nyandarua this 17th Day of December 2025.

**MUGO KAMAU
JUDGE**

In the presence of: -

Court Assistant - Samson.

Applicant..... Mr. Njihia.

Respondent.....N/A.