



Mole v Ark Green Homes Limited (Civil Miscellaneous Application E215 of 2025) [2025] KEHC 18218 (KLR) (5 December 2025) (Ruling)

Neutral citation: [2025] KEHC 18218 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
CIVIL MISCELLANEOUS APPLICATION E215 OF 2025**

G MUTAI, J

DECEMBER 5, 2025

BETWEEN

JOSEPH FURAHA MOLE APPLICANT

AND

ARK GREEN HOMES LIMITED RESPONDENT

RULING

1. The application before the Court is dated 1st July 2025. It is brought under sections 1, 1A, 3, 3A, 63, and Orders 42 Rule 6, 50 Rule 6, and 51 of the Civil Procedure Rules, and Article 159 of *the Constitution* of Kenya 2010. The applicant seeks to have the time to file the appeal enlarged, by this Court granting him leave to file an appeal out of time and to stay the execution of the judgment and/or the decree delivered on 19th May 2025.
2. The applicant contends that the proposed appeal has good chances of success and that it was necessary to stay execution of the judgment. It was further stated that grant of the orders sought would not prejudice the respondent.
3. The application is opposed. The respondent, through its director, Justine Mwangemi Mghendi, filed a replying affidavit sworn on 21st July 2025. The deponent stated that the application was frivolous, vexatious, and lacked merit, and was an abuse of the process of the Court and ought to be dismissed with costs. He deposed that the applicant was aware of the delivery of the judgment, and alternatively could have accessed the judgment in the CTS platform. He contended that no reason for the delay was given. On stay pending appeal, he deposed that the conditions precedent to the grant of such an order had not been met. In any case, the respondent was capable of refunding the decretal sum if the appeal was successful.
4. The matter was canvassed by way of written submissions. The applicant's submissions are dated 22nd August 2025. Those of the respondent are dated 24th September 2025.



5. I note that there is no appeal at the moment. The applicant seeks leave to appeal out of time. He also seeks a stay. In my view stay application can only be sought where there is an existing appeal. There is none in this case.

6. On whether to grant leave to file an appeal out of time, I note that section 79G of the Civil Procedure Act provides that: -

“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 or 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.”

7. The Supreme Court of Kenya, while considering an application for extension of time to file an appeal out of time, in the case of *Salat v Independent Electoral and Boundaries Commission & 7 others* [2014] KESC 12 (KLR) stated that: -

“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; A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the court. Whether the court should exercise the discretion to extend time, is a consideration to be made on a case to case basis; Whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the court; Whether there will be any prejudice suffered by the respondents if the extension is granted; Whether the application has been brought without undue delay; and whether, in certain cases, like election petitions, public interest should be a consideration for extending time.”

8. In the case of *Paul Wambua Musili v the Attorney General & 2 others* [2015] eKLR, it was held by Koome, JA, as she then was, that: -

“(8) I have considered the rival submissions by both counsel, it is now well settled by a long line of authorities by this Court that the decision of whether or not to extend the time for filing an appeal the Judge exercises unfettered discretion. However, in the exercise of such discretion, the court must act upon reason(s) not based on whims or caprice. In general, the matters which a court takes into account in deciding whether to grant an extension of time are; the length of the delay, the reason for the delay, the chances of the appeal succeeding if the application is granted, the degree of prejudice to the respondent if the application is granted. (See *Mutiso V Mwangi* [1999] 2 EA 231.”

9. Applying the above-cited decisions, I am of the view that the application has merit. The delay in this case is not extraordinary. I have perused the draft Memorandum of Appeal. The same is arguable. I am also of the opinion that the respondent won't be prejudiced if the instant application is allowed.

10. The orders that therefore commend themselves to me are: -

1. Leave to appeal out of time is hereby granted. The applicant to file the appeal within 30 days of the date hereof;



2. Application for stay pending appeal is declined as no appeal has been filed as yet; and
3. The respondent shall have the costs of the application.

11. It is so ordered

DATED AND SIGNED AT MOMBASA, THIS 5TH DAY OF DECEMBER 2025. DELIVERED VIRTUALLY THROUGH MICROSOFT TEAMS.

GREGORY MUTAI

JUDGE

In the presence of:-

Mr Michira, for the Applicant;

Ms Nyambane, for the Respondent; and

Norah – Court Assistant.

