



**Adhiambo v Okumu (Environment and Land Appeal E039 of 2025)
[2025] KEELC 18439 (KLR) (18 December 2025) (Ruling)**

Neutral citation: [2025] KEELC 18439 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISUMU
ENVIRONMENT AND LAND APPEAL E039 OF 2025**

E ASATI, J

DECEMBER 18, 2025

BETWEEN

DORICE ALUOCH ADHIAMBO APPELLANT

AND

ROSELYNE OKUMU RESPONDENT

*(An appeal from the Judgement of Hon. R.K. Ondieki (SPM)
dated 27th July, 2021 in KSM CMC, ELC NO.422 OF 2018)*

RULING

1. The Notice of Motion dated 23rd May, 2025 seeks for leave to appeal out of time, and for an order of stay of execution of the decree pending hearing and determination of the appeal.
2. The grounds of the application are that the Applicant seeks to appeal the whole of the judgement dated 27th July, 2021 delivered by Hon. R.K. Ondieki. That the Applicant was unwell and was depleted of money hence could not file the appeal within time.
3. The application was supported by the contents of the Supporting Affidavit sworn by the Applicant on 23rd May, 2025.
4. The application was opposed vide the Respondent's Replying Affidavit sworn on 19th June, 2025. The Respondent averred that no reason had been given why the appeal was not filed within time.
5. The Applicant filed a Supplementary Affidavit dated 7th October, 2025.
The application was heard by way of written submissions.
6. Written submissions were filed on behalf of the Applicant by the firm of Ochieng Ndolo & Company Advocates. Relying on section 79G of the *Civil Procedure Act*, Counsel submitted that the time within which to file the appeal may be extended. Relying on the case of Nicholas Kiptoo Arap Korir Salat -



vs- IEBC & 7 Others, Nairobi Supreme Court Application No.16 of 20214 [2014 KESC 12 (KLR) on the grounds for extending time to appeal.

7. Counsel submitted that the Applicant has demonstrated that she was unwell, she is a widow and that she did not receive updates from her previous advocates.
8. That on considering the unique and unfortunate circumstances of the case, the delay in bringing the application is justified. That the appeal is arguable with a good chance of success. That the Applicant is about to be evicted from the suit land and that she will suffer substantial loss if this happens.
9. On behalf of the Respondent, written submissions dated 20th September, 2025 were filed by the firm of Otieno Yogo, Ojuro & Company Advocates. Counsel submitted that an applicant who seeks leave of court to appeal out of time must demonstrate good and sufficient cause for not filing the appeal in time. Relying on the case of *Thuita Murangi -vs- Kenya Airways* [2003]eKLR, Counsel submitted that the matters which the court takes into account in deciding whether to grant an extension are (i) the length of the delay, (ii) the reason for delay, (iii) the chances of appeal succeeding if the application is granted, (iv) degree of prejudice to the Respondent if the application is granted, (v) the importance of compliance with time limits to the particular litigation or issue (vi) the effect if any on the administration of justice or public interest if any is involved.
10. Counsel submitted that the Applicant is obligated to adduce material upon which the court can exercise its discretion in the applicant's favour.
11. That the judgement having been delivered on 27th July, 2021 and the application filed 4 years later, it makes the delay unreasonable. That as the Applicant had not tendered evidence of her alleged illness and failed to explain the delay, the delay was as a result of her own indolence and that she was not keen to prosecute the intended appeal.
12. That the Applicant through her advocate was all along aware of the judgement hence the delay is not explained.
13. Relying on the case of *Kenya Shell Ltd -vs- Kibiru & Another* 1986 KLR, Counsel submitted that an Applicant for an order of stay of execution must demonstrate the likelihood of suffering substantial loss if stay is denied and that in the present case, the appeal would not be rendered nugatory.
14. Counsel concluded that the Applicant had not satisfied the dictates of sections 79G and 95 of the [Civil Procedure Act](#) as read with Order 50 Rule 6 and Order 42 Rule 6 of the Civil Procedure Rules.
Counsel urged the court to dismiss the application with costs.
15. I have considered the application. The Applicant has explained the delay. She has exhibited the medical records vide the Supplementary Affidavit. It is the applicant's case that the decree is yet to be executed and that the judgement decreed for her eviction.
16. I find that the application has merit. I hereby allow the application as follows: -
 - i. Time for filing the appeal is enlarged. The Appeal be filed within 14 days hereof.
 - ii. Upon filing of the appeal an order of stay of execution of the judgement shall issue pending hearing and determination of the appeal on condition that the applicant shall deposit the sum of Kshs 200, 000/ (Kenya shillings two hundred thousand only) as security, in an interest earning account in the joint names of Counsel for the applicant and Counsel for the respondent within 30 days from the date of filing the appeal. If no appeal is filed within the timelines given herein and if there is default in depositing the security, the stay of execution order granted herein shall lapse.



iii. Thrown way costs of Kshs.15,000/- are hereby awarded to the Respondent.

Orders accordingly.

RULING DATED AND SIGNED AT KISUMU AND DELIVERED VIRTUALLY THIS 18TH DAY OF DECEMBER, 2025.

E. ASATI,

JUDGE.

In the presence of:

Maureen: Court Assistant.

Ndolo for the Applicant

Rono holding brief for Ojuro for the Respondent.

