



Chemwetich v Kipruto & 2 others (Environment and Land Miscellaneous Application E008 of 2025) [2025] KEELC 18455 (KLR) (16 December 2025) (Ruling)

Neutral citation: [2025] KEELC 18455 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KABARNET
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E008 OF 2025
L WAITHAKA, J
DECEMBER 16, 2025**

BETWEEN

JOSHUA K. CHEMWETICH APPLICANT

AND

SALINA TARKOK KIPRUTO 1ST RESPONDENT

SILA KIPRUTO 2ND RESPONDENT

JOSHUA KIPRUTO 3RD RESPONDENT

RULING

1. Vide a notice of motion application dated 31/7/2025 the applicant herein seeks an order extension of time to appeal appeal and an order of stay of execution of the judgment of the lower court delivered on 25/5/2025 and all consequential orders pending the hearing of the application and the intended appeal.
2. The application is premised on the grounds that the applicant intends to challenge the judgment of the lower court through an appeal; that the applicant’s memorandum of appeal raises triable issues and that unless an order of stay is granted the respondents may execute the decree issued in their favour thereby rendering the appeal nugatory.
3. The application is supported by the affidavit of the applicant, sworn on 26/8/2025 in which the grounds on the face of the application are reiterated. Besides reiterating the grounds on the face of the application, the applicant has annexed the following documents to the affidavit:-
 - i. Copy of the decree;
 - ii. Copy of application for an eviction order filed in the lower court;
 - iii. Photographs of alleged demolition of the applicant’s house; and



- iv. Copy of draft memorandum.
4. The applicant depones that the delay to file the intended appeal and seek for stay was occasioned by late service of decree of the court.
5. The applicant is opposed by the respondents on the grounds that it is inept, frivolous, an afterthought and an abuse of the court process; that no sufficient reason and/or cause has been tendered by the applicant why the appeal was not lodged within the prescribed period; that the applicant had the opportunity of appealing within the prescribed time; that the applicant did not make any effort after the delivery of the judgment to obtain the judgment, decree and/or request for certified copies of proceedings and that there has been inordinate and inexcusable delay in bringing the application for extension of time and stay of execution (three (3) months). Further that the application does not meet the threshold for granting stay of execution pending appeal under Order 42 Rule 6 as there is no appeal on which stay can hinge; that the application for stay pending appeal is premature as stay of execution cannot be granted in anticipation of an intended appeal and that the applicant has not demonstrated that the intended appeal is meritorious to warrant exercise of the court's discretion in his favour.
6. The application was argued orally on 19/9/2025. Counsels for the parties basically reiterated the grounds taken up in support of opposition for the application.

Analysis and determination

7. This court has discretionary power to grant leave to file an appeal out of time. That power is granted by Section 79G of the *Civil Procedure Act*. In that regard see the case of Edward Kamau & Another vs. Hannah Mukui Gichuki & Another where it was stated:-

“On whether this court should grant extension of time for filing an appeal, the applicable law is section 79G of the *Civil Procedure Act*...

Under the proviso to the said section 79G of the *Civil Procedure Act*, an appeal may be admitted out of time if the appellant satisfies the court that he had a good and sufficient cause for not filing the appeal in time.”

The court further stated:-

“The Supreme Court in the case of Nicholas Kiptoo Arap Korir Salat vs. IEBC & 7 others, SC Appl 16/2014 laid down the following as the underlying principles that a court should consider in exercise of discretion to extend time: -

- i. Extension of time is not a right of a party. It is equitable remedy that is available to a deserving party at the discretion of the court;
- ii. The party who seeks for extension of time has the burden of laying a basis to the satisfaction of the court;
- iii. As to whether the court should exercise the discretion to extend time, is a consideration to be made on a case by case basis;
- iv. Whether there is a reason for the delay; the delay should be explained to the satisfaction of the court;
- v. Whether there will be any prejudice to be suffered by the respondents if the extension is granted;
- vi. The application should have been brought without undue delay; and



- vii. In certain cases, like election petitions, public interest should be a consideration for extending time.”
8. In the instant application, I have read and considered the explanation offered by the applicant for his failure to file the intended appeal within the stipulated time, being delay in obtaining the decree. I note that the applicant has not demonstrated that he had any challenges in obtaining the decree and the other documents he needed to file the appeal. For instance, there is no indication as to whether the applicant applied to the lower court to be supplied with the judgment, decree and certified copies of the court’s proceedings. In absence of evidence of any effort made by the applicant to obtain the documents required to file the intended appeal, I agree with the respondents that the decision by the applicant to appeal against the judgment of the lower court was but an afterthought, prompted by the respondents’ execution of the decree issued in their favour.
9. Although the delay of two months or thereabout is not so inordinate that it would, inappropriate circumstances, preclude exercise of this court’s discretionary power to extent time to file appeal, that power can only be exercised in favour of the applicant if he demonstrates that he was prevented from filing the intended appeal by factors beyond his control and not otherwise.
10. Having determined that no reasonable explanation has been offered by the applicant for the delay in filing his intended appeal, I decline to exercise the discretionary power vested in this court in favour of the applicant.
11. As the application for stay pending appeal is hinged on the intended appeal, the refusal of the application for extension of time to lodge appeal has the effect of rendering the application for stay pending appeal otiose.
12. The upshot of the foregoing is that the application dated 31st July 2025 has no merit. Consequently, I dismiss it with costs to the respondents.
13. Orders accordingly.

DATED, SIGNED AND DELIVERED THIS 16TH DAY OF DECEMBER, 2025.

L. N. WAITHAKA

JUDGE

Ruling delivered virtually in the presence of;-

Ms. Cherop h/b for Mr. Kiplagat for the applicant

Mr. Chebii for the respondent

Court Asst.: Ian/Christine .

