



**Miano & 2 others v Mbaka t/a Branden Junior School (Environment and Land Appeal E003 of 2025 & Environment and Land Miscellaneous Case E013 of 2025 (Consolidated)) [2025] KEELC 18555 (KLR) (18 December 2025) (Ruling)**

Neutral citation: [2025] KEELC 18555 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIVASHA  
ENVIRONMENT AND LAND APPEAL E003 OF 2025 & ENVIRONMENT  
AND LAND MISCELLANEOUS CASE E013 OF 2025 (CONSOLIDATED)**

**MC OUNDO, J**

**DECEMBER 18, 2025**

**BETWEEN**

**CHARLES KAMAU MIANO ..... 1<sup>ST</sup> APPELLANT**

**SIMON KIMANI KIBARABARA ..... 2<sup>ND</sup> APPELLANT**

**VINCENT KERARO OSORO ..... 3<sup>RD</sup> APPELLANT**

**AND**

**JANET KIMATHI MBAKA T/A BRANDEN JUNIOR SCHOOL. RESPONDENT**

**RULING**

1. ELC Misc No. E013 of 2025 was consolidated with ELCLA E003 of 2025 with ELCLA E003 of 2025 being the lead file. Subsequently, what is before for determination are two Applications, dated 26<sup>th</sup> August 2025 and 10<sup>th</sup> September 2025 respectfully. For ease of reference, the parties herein shall be referred to as they appear in the ELCLA E003 of 2025
2. The first Application is a Notice of Motion dated 26<sup>th</sup> August 2025 brought by the Respondent herein pursuant to the provisions of Rule 3 of the Court Vacation Rules, Sections 12 and 14 of the *Landlord and Tenant (Shops, Hotels and Catering Establishments) Act*, Cap 301, and Order 22 of the Civil Procedure Rules wherein the Respondent has sought for the following orders;
  - i. Spent
  - ii. Spent
  - iii. The Honourable Court be pleased to adopt and recognize the order of the Business Premises Rent Tribunal dated 30<sup>th</sup> January, 2025 as an order of the court.



- iv. That she be granted leave to execute the said Tribunal Order as a decree of the Honourable Court.
  - v. Upon such leave being granted, warrants of attachment be issued to direct auctioneers for purposes of execution.
  - vi. OCS Naivasha police station do ensure compliance.
  - vii. Costs of the application be provided for.
3. The Application is premised on the ground therein and the Supporting Affidavit of equal date sworn by Janet Kimathi Mbaka, the Respondent herein who deponed that on 30<sup>th</sup> January, 2025, she had obtained an order from the Business Premises Rent Tribunal in BPRT Case No. E132 of 2024 directing the Appellants herein to pay rent arrears amounting to Ksh. 4,142,188/= together with cost assessed at Ksh. 30,000/=.
  4. That however, the Appellants being aggrieved by the said order and filed an Appeal at the Environment and Land Court being ELCA No. E003 of 2025 whereby they had sought for stay of execution pending appeal. That the Application was allowed on condition that they deposit the entire decretal sum amounting to Ksh. 4,142,188/=together with the assessed cost of Ksh. 30,000/= within 45 days, failure to which she could execute.
  5. That the 45 days granted having lapsed and there having been no compliance, that she be allowed to execute the Business Premises Rent Tribunal's order as a decree of the court. She thus prayed that the instant Application be allowed.
  6. In response to the Application, the Appellants through their Replying Affidavit sworn on the 24<sup>th</sup> September, 2025 by Charles Kamau Miano admitted that they were unable to abide by the timelines imposed by the court owing to the fact that the Appellant being a school, depended on school fees as its sole source of revenue. That at the time of issuance of the orders, schools were at the tail end of the second term wherein third term was scheduled to commence in the last week of August, 2025. That subsequently, they had only managed to raise the entire sum on or about 28<sup>th</sup> August, 2025 which was 10 days outside the timelines set by the court. That without any further delay, the said amount had been deposited in court and a receipt issued.
  7. That they were keen to prosecute their Appeal and therefore the Application ought to be dismissed since allowing the same would render the said Appeal nugatory. That the circumstances giving rise the Application had been beyond their control which in turn had rendered compliance impossible. That the delay as has been explained was excusable. That no prejudice would befall the Respondent hence it was only fair and just for the court to decline the orders sought.
  8. The second Application is a Chamber Summons dated 10<sup>th</sup> September 2025 brought by the Appellants pursuant to the provisions of Sections 1A, 1B, 3A of the Civil Procedure Rules (sic); order 50 rule 6, Order 51 of the Civil Procedure Rules 2010 and Rule 3(1) & (2) of the High court Practice and Procedure Rules (Vacation) wherein they have sought for the following orders.
    - i. Spent.
    - ii. The Honourable Court be pleased to enlarge the time within which the Applicants were required to deposit the sum of Ksh. 4,172,188/= as security for due performance of the decree pursuant to the court's Ruling delivered on 3<sup>rd</sup> July, 2025.



- iii. The sum of Ksh. 4,172,188/= deposited by the Applicant on 28<sup>th</sup> August 2025 be deemed as duly deposited in compliance with the court's Ruling on 3<sup>rd</sup> July, 2025.
  - iv. The stay of execution of the judgement/ decree in Nakuru BPRT case No. E132 of 2024 granted by the honourable court on 3<sup>rd</sup> July, 2025 be reinstated and/or deemed to remain in force pending the hearing and determination of the intended appeal.
  - v. The costs of the application be provided for.
9. The Chamber Summons was supported by the grounds therein and a Supporting Affidavit of an even date sworn by Charles Kamau Miano who deponed that vide a Ruling of 3<sup>rd</sup> July, 2025 the honorable court granted the Applicant a conditional stay of execution of the judgement/decree in Nakuru BPRT Case No. E132 of 2024 on the terms that it deposits the sum of Ksh. 4,172,188/= in court within forty-five (45) days. That the Appellant, being a school, its sole source of income was school fees collected only at the beginning of each academic term.
  10. That at the time of the said ruling, the school was in later stages of the second term, and no further fees could be collected until the commencement of the third term in September 2025. That owing to the above financial cycle, the Appellant were unable to raise the decretal sum within the stipulated forty-five (45) days.
  11. That nonetheless, immediately upon the reopening of schools for the third term in late August 2025, the Applicants had mobilized funds and had deposited in court the entire sum of Ksh. 4,172,188/= on 28<sup>th</sup> August, 2025. That the delay to comply had thus been occasioned solely by the school's financial cycle and not by willful default, negligence, or disregard of the honorable court's orders. That the Respondent would suffer no prejudice whatsoever as the decretal sum was already secured in court. On the other hand, the Appellant stood to suffer grave prejudice and irreparable loss were the court to find that the stay of execution had lapsed.
  12. That the instant Application has been brought promptly, in utmost good faith, and in the wider interest of justice for which Court should grant the orders sought herein.
  13. In response and in opposition to the Appellants' Chamber Summons, the Respondent, through her Replying Affidavit sworn on 7<sup>th</sup> October, 2025 deponed that the entire Chamber Summons was inept, redundant and a gross abuse of the court's process. That the Honorable Court had on 3<sup>rd</sup> July, 2025 issued the following clear orders, to wit.
    - i. A stay execution of the judgement/decree in Nakuru tribunal case number E132 of 2024 is herein granted pending hearing and determination of applicant's intended appeal.
    - ii. The Appellants/Applicants do deposit a sum of Ksh. 4,172,188/= being the rent arrears and assessed landlord costs in court as security for the performance of the decree herein within 45 days from the date of the ruling.
    - iii. The Appellants/ Applicants compile, file and serve a record of appeal upon the respondent within 45 days from the date hereof.
    - iv. In the event of default of any of the aforementioned conditions, the stay hereby granted shall lapse and the Respondent shall be at liberty to execute without further reference to the court.
    - v. The costs of this application shall abide the outcome of the appeal.
  14. That accordingly, consequent to the Applicant's blatant non-compliance with the orders of the honorable court, she was at liberty to execute the decree. That indeed the decretal amount was



- deposited in court on 28<sup>th</sup> August, 2025, when 10 days had lapsed after the stipulated time, and without leave of the court when the current application had been lodged 10 days thereafter. That in any event, to date she had not been served with the record of appeal as had been directed by the honorable court.
15. She thus deponed that the deposit had only been made by the Appellants as a knee-jerk response upon being served with her Application dated 26<sup>th</sup> August, 2025, for adoption of the tribunal's judgement as a decree of the Honorable Court. That the Appellants had not adduced any valid justification and or reason for non-compliance with the said orders of 3<sup>rd</sup> July, 2025 hence they were underserving of the court's direction.
  16. That subsequently, the Appellant's Application was totally mala fides and an unfair attempt to delay the conclusion of the instant matter and deny her the fruits of a validly obtained judgement, which was indeed very prejudicial to her.
  17. She thus prayed that the Appellants' Chamber Summons Application be dismissed with costs and that the sum of Ksh. 4,172,188/= that had been deposited in court on 28<sup>th</sup> August, 2025, be released to her as there were no orders of stay, as litigation must at some point come to an end.
  18. Directions were taken for the disposition of both the Applications by way of written submissions herein summarized as under.

### **Appellants' Submissions.**

19. The Appellants vide their submissions dated 23<sup>rd</sup> October, 2025 in support of their Chamber Summons dated 10<sup>th</sup> September 2025 and in opposition to the Respondents Notice of Motion Application dated 26<sup>th</sup> August 2025 submitted that the purpose of requiring security for stay of execution was to protect the decree-holder (Respondent) and to preserve the status quo pending appeal. That subsequently, once the security was furnished, even if slightly late, the purpose was essentially fulfilled.
20. They placed reliance on the provisions of Sections 1A, 1B, 3A of the *Civil Procedure Act* and Order 50 rule 6 of the Civil Procedure Rules to submit that a Court had power to enlarge time or excuse non-compliance with an order. Further reliance was placed on the holding of Supreme court of Kenya in the case of Nicholus Kiptoo Arap Korir Salat v IEBC & 7 others (2014) where it had been emphasized that extension of time was not a right but an equitable remedy and that the discretion must be exercised having regard to;
  - i. The length of the delay;
  - ii. The reason for the delay;
  - iii. Whether the applicant acted in good faith;
  - iv. Whether the respondent would suffer prejudice; and
  - v. Whether the Application is made without undue delay.
21. That whereas the Appellant did not dispute the delay of ten (10) days in making the deposit, the said delay is excusable, as there had been a valid explanation wherein the Respondent was not prejudiced. That equity and justice favour excusal of the deadline in the said circumstances. That as had been demonstrated, the Appellants run a school whose sole source of revenue was the collection of school fees from pupils and which school fees was normally paid at the start of the term. That at the time of issuance of the court's order, the school calendar had positioned the institution at the tail end of the school term, with the third term scheduled to commence in the last week of August, 2025. That



subsequently, the revenue inflows were very limited (practically nil) during the interim period. That due to those operational constraints the Appellant was unable to raise the requisite funds within 45 days window.

22. That eventually, on or about 28<sup>th</sup> August, 2025, being 10 days outside the 45 days' timeframe, the Appellant had managed to raise the full sum and without any further delay deposited the amount in court wherein a receipt had been issued. It was their submission that the Appellant had shown a genuine desire to prosecute the appeal by meeting the deposit condition albeit slightly late, hence preserving the appeal's viability. That vacating the stay order would render the appeal nugatory, undermining the purpose of granting the stay in the first place. That in any case, the delay had been caused by circumstances beyond the Appellant's control as had been explained.
23. That no prejudice would befall the Respondent by virtue of the ten days delay as the security was now in court hence her interest was safeguarded.
24. That given the minimal delay, the full compliance, the lack of prejudice and the Appellant's explanation, the requisites favour excusal of the delay since to refuse would be to elevate form over substance, and potentially infringe the Appellant's constitutional right of appeal under the provisions of Articles 48 and 50 of *the Constitution* of Kenya, 2010. That it was only fair and just that the court decline to vacate the stay and treat the security deposit as validly made.
25. They thus prayed that the court exercise its discretion under the relevant provisions of the law, excuse the late deposit and treat the security as properly furnished, thereby preserving the stay of execution and proceeding with the appeal.

### **Respondent's Submissions**

26. Vide her Written Submissions dated 6<sup>th</sup> October, 2025, the Respondent summarized the factual background of the matter before framing her issues for determination as follows; -
  - i. Whether the Applicants have demonstrated sufficient cause to warrant enlargement of time to deposit security.
  - ii. Whether the Applicants are entitled to reinstatement of the stay of execution orders granted on 3<sup>rd</sup> July, 2025.
  - iii. Whether the Applicant's conduct amounts to an abuse of the court process.
  - iv. Who should bear the costs of the application.
27. While placing reliance on the provisions of Order 50 Rule 6 of the Civil Procedure Rules and the decided case of *Nicholus Kiptoo Arap Korir Salat v IEBC & 7 others* (2014) eKLR the Respondent's submissions were that the Appellants had not demonstrated sufficient cause to warrant enlargement of time to deposit security since the purported deposit of the decretal amount in court on 28<sup>th</sup> August, 2025 had been done 10 days out of the stipulated time without leave of the court and the instant application lodged 10 days thereafter. That their explanation for delay, if any, was neither convincing nor supported by evidence. That since the law does not assist an indolent litigant, the Honorable Court's discretion could not be exercised in favour of a party who had blatantly ignored clear orders.
28. With regard to the second issue for determination as to whether the Applicants were entitled to reinstatement of the stay of execution orders that had been granted on 3<sup>rd</sup> July, 2025, she submitted in the negative and explained that the stay of execution that had been granted therein was conditional. That subsequently, the condition being unmet, the stay had automatically lapsed by operation of law



hence there was nothing to reinstate. That consequently, the sum of Ksh. 4,172,188/= which had been deposited in court on 28<sup>th</sup> August, 2025 be released to the Respondent, there being no subsisting order of stay warranting its retention.

29. On the third issue for determination, the Respondent submitted that the Appellants' conduct amounted to an abuse of the court process to the effect that despite the express directions issued on 3<sup>rd</sup> July, 2025, the Appellants did not comply. They failed to deposit the amount in court, file and serve their record of appeal upon the Respondent within the time frame stipulated by the court. That the said order was explicit and unconditional, forming part of the terms upon which the court had granted a stay of execution.
30. That the Applicant's omission to file the Record of Appeal had demonstrated a lack of seriousness and diligence, wherein their present attempt to seek indulgence of the Honorable Court was nothing more than a delaying tactic designed to deny her (Respondent) the fruits of a validly obtained judgement. That indeed, courts have consistently frowned upon such conduct, as litigation must at some point come to an end. She placed reliance in the decided case of Kamau (Acting as the personal representative of Francis Thuo Kamau t/a Segero Club & Bar) v Odhiambo & 2 others [2023] KEHC 24661 (KLR)
31. That in the circumstances, there were no subsisting stay orders, and the sum of Ksh. 4,172,188 deposited in court should be released to her. That since litigation must come to an end, the instant application ought to be dismissed with costs as provided for under Order 50 rule 6 of the Civil Procedure Rules that cost be borne by the party making the application.

#### **Determination.**

32. I have considered the two applications filed in the consolidated matters. For ease of reference, parties shall remain as indicated in the heading of the Ruling. In the Notice of Motion dated the 26<sup>th</sup> August 2025, the Respondents (landlord/decree-holder) seeks to adopt and execute the Business Premises Rent Tribunal (BPRT) order dated 30<sup>th</sup> January 2025 as a decree of the court for non-compliance with the terms of the conditional stay, whereas the Appellants (tenants/debtors) in their Chamber Summons dated 10<sup>th</sup> September 2025 seek to have time enlarged for depositing the security, deem the late deposit as compliant, and reinstate the stay of execution order.
33. I have considered the Applications, the arguments for and against both, the authorities cited and the applicable law and the fact that there is filed in court a record of appeal. It is not in dispute that on the 3<sup>rd</sup> July 2025, the court had granted the Appellants a conditional stay of execution provided that they deposited the entire decretal sum of Ksh. 4,172,188/= (including costs) as security and thereafter file and serve their record of appeal within 45 days failure to which stay would lapse automatically and the Respondent would be at liberty to execute without further court reference.
34. It is further not in contest that the 45-day deadline for compliance would have expired on or about 17<sup>th</sup> August 2025. That the Appellants deposited in court the decretal amount on the 28<sup>th</sup> August 2025 which was 10 days late and also filed their record of appeal. The Respondents then sought to execute for non-compliance with the terms of the conditional stay.
35. Given the above scenario, the court must now exercise its discretion to determine if the 10-day delay for the deposit should be excused, considering the principles of justice, the right to appeal and the overriding Objective to ensure that a party's right to be heard is not extinguished by technicalities.
36. I have looked at the provisions of Sections 1A and 1B of the *Civil Procedure Act* which embody the Overriding Objective of facilitating the just, expeditious, proportionate, and affordable resolution of



- civil disputes thus allowing the court to prioritize the substance of the dispute (the appeal) over a technical default.
37. Section 3A of the *Civil Procedure Act* grants the court inherent power to make such orders as may be necessary for the ends of justice or to prevent the abuse of the process of the court.
38. Section 63(e) of the *Civil Procedure Act*, is to the effect that in order to prevent the ends of justice from being defeated, the court may, if it is so prescribed, make such other interlocutory orders as may appear to the court to be just and convenient.
39. Order 50 Rule 6 of the Civil Procedure Rule which provides that:
- “Where a limited time has been fixed for doing any act or taking any proceedings under these Rules, or by summary notice or by order of the court, the court shall have power to enlarge such time upon such terms (if any) as the justice of the case may require, and such enlargement may be ordered although the application for the same is not made until after the expiration of the time appointed or allowed:
- Provided that the costs of any application to extend such time and of any order made thereon shall be borne by the parties making such application, unless the court orders otherwise.”
40. And lastly Section 95 of the *Civil Procedure Act* which is clear that:
- “where any period is fixed or granted by the court for the doing of any act prescribed or allowed by this Act, the court may, in its discretion, from time to time, enlarge such period, even though the period originally fixed or granted may have expired.”
41. From the above provisions of the law, it is trite that the power to enlarge time for doing any act ordered by the Court, and which time has expired, is available to the court and is discretionary. The provisions of the law above recognize that there had been a time fixed or extended for parties to comply with an order of the court but time expired. Indeed, Order 50 Rule 6 of the Civil Procedure Rules specifically grants the court power to enlarge time fixed by the court for doing any act, even if the application for enlargement is made after the time fixed has expired.
42. Being a matter of discretion of the court, granting enlargement of time will depend on the circumstances of each case which vary from case to case. It therefore follows that previous enlargement per se does not limit the power of the court to enlarge time except that, only previous enlargements will be considered by the court in determining whether the applicant has abused the process of the court and should not, therefore benefit from any discretion of the court. See *Fidelity Commercial Bank Ltd v Azim Jiwa Rajwani* (2014) eKLR.
43. In *Nicholas Kiptoo Arap Korir Salat v. The Independent Electoral and Boundaries Commission & 7 Others* [2014] eKLR the Supreme Court of Kenya had held that:
- “... it is clear that the discretion to extend time is indeed unfettered. It is incumbent upon the Applicant to explain the reasons for delay in making the application for extension and whether there are any extenuating circumstances that can enable the Court to exercise its discretion in favour of the Applicant.
- “... we derive the following as the underlying principles that a Court should consider in exercising such discretion:



1. 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;
2. a party who seeks extension of time has the burden of laying a basis, to the satisfaction of the Court;
3. whether the Court should exercise the discretion to extend time, is a consideration to be made on a case- to- case basis;
4. where there is a reasonable [cause] for the delay, [the same should be expressed] to the satisfaction of the Court;
5. whether there will be any prejudice suffered by the Respondent, if extension is granted;
6. whether the application has been brought without undue delay; and
7. whether in certain cases, like election petitions, public interest should be a consideration for extending time”

44. In my view, it has not been demonstrated to the satisfaction of this court that the Appellant is abusing the process of the court. Indeed, the Appellant has demonstrated that it being a school, it was unable to raise the funds within 45 days because their sole source of revenue being school fees was only collected at the start of the academic term in September 2025. The delay was therefore due to the school’s financial cycle and not by willful default. That the Respondent would not be prejudiced as the money was now secured in court.
45. Further, by filing the Record of Appeal, the Appellants have moved beyond mere promises and have shown the court that they are not just trying to buy time, but are ready to argue the merits of their case. This directly counters the Respondent’s argument that they are indolent litigants.
46. The core requirements of the order of the 3<sup>rd</sup> July 2025 were securing the money and filing the appeal and I find that since both have now been complied with, the Respondent’s interest is arguably better protected now than it was during the 45-day waiting period and the Appellants have achieved substantial compliance wherein the order of the court has been entirely fulfilled. The Respondent is secured, and the Appeal is ready for determination. Under Sections 1A and 1B of the [Civil Procedure Act](#), the court is encouraged to look at this “wider picture” rather than the 10-day lapse.
47. Under Articles 48 and 50 of [the Constitution](#), the right of access to justice and a fair hearing is paramount thus to allow execution now, when the Record of Appeal is already before the court, would render the entire appellate process nugatory (useless). I find that the Respondent will suffer no financial prejudice because the full amount is safely held by the Court.
48. I therefore find that the Appellants have demonstrated good faith by moving with speed to file the Record and deposit the funds. The delay was explained by the school’s unique financial cycle and following the precedent in Nicholas Salat case (supra), the delay is minor, the explanation is reasonable, and the security is provided. In the end, while the Respondent’s Notice of Motion dated 26<sup>th</sup> August 2025 is herein dismissed, the Appellants Chamber Summons dated 10<sup>th</sup> September 2025 is herein allowed. The late filing of the Record of Appeal and the security deposit is herein regularized and deemed as filed and/or deposited in time. The Stay of Execution is herein reinstated to allow the Appeal to be heard on its merit.
49. Costs shall abide the outcome of the Appeal.



**DATED AND DELIVERED VIA MICROSOFT TEAMS AT NAIVASHA THIS 18<sup>TH</sup> DAY OF  
DECEMBER 2025.**

**M.C. OUNDO**

**ENVIRONMENT & LAND COURT– JUDGE**

