

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ELCLA NO E033 OF 2024

JANE	NYABONEI	1ST
APPELLANT/APPLICANT			
STEPHEN	KEMEI	2ND
APPELLANT/APPLICANT			

VERSUS

ALICE	CHEMUTAI	
RESPONDENT			

RULING

1. This ruling is in respect of the Applicants Notice of Motion application dated 18th August, 2025, seeking the following orders:
 - a) *Spent*
 - b) *THAT the Honourable Court be pleased to review the ruling of the Court dated 24th January 2025 and the orders emanating therefrom extending the time within which the Applicant is to file an appeal and deposit security of costs in a Joint interest earning account in the name of the advocates on record.*
 - c) *Spent*
 - d) *Spent*
 - e) *THAT the Honourable Court be pleased to grant stay of execution of the decree, judgment and all other consequential orders arising from the case serialized as NAKURU CMELC 142 OF 2020 pending hearing and determination of the applicants intended appeal.*
 - f) *THAT costs of this application be provided for.*

2. The application is supported by the annexed affidavit of Stephen Kemei, the 2nd Applicant, sworn on 18th August, 2025, where he deponed that the orders emanating from the ruling issued by this court on 24th January, 2025, have lapsed necessitating the filing of this application.
3. It was his deposition that failure to abide by the orders of this court was occasioned by inadvertence as they are persons of the straw and the said funds have been unavailable. He deponed that no prejudice will be occasioned to the Respondent if the orders sought are granted.
4. Alice Chemutai, the Respondent, filed a Replying Affidavit sworn on 21st October, 2025, and deponed that the said ruling sought to be reviewed was delivered on 24th January, 2025 yet the present application was filed on 18th August, 2025; a delay of almost seven months. She deponed that the instant application is not within the parameters of Order 45 of the Civil Procedure Rules.
5. The Respondent further deponed that the issues raised by the Applicants were canvassed in the ruling of 24th January, 2025 and as such an application for review cannot be used as an appeal in disguise and urged the court to dismiss the application with costs.

APPLICANTS' SUBMISSIONS

6. Mr. Maina, counsel for the Applicants filed submissions dated 10th November, 2025, and identified the issue for determination as whether the application is merited. Counsel relied on provisions of Order 42 Rule 6 (2) of the Civil Procedure Rules and submitted that the Applicants stand to suffer substantial

loss if execution proceeds before the appeal and relied on the case of **Kenya Shell Ltd vs Kibiru & Another [1986] KLR 410.**

7. It was counsel's submission that the seven months' delay was occasioned by the Applicant's temporary financial incapacity and not indolence. Counsel submitted that the Applicants have acted promptly in securing funds for compliance and thus the instant application is made in good faith and relied on the cases of **Machira t/a Machira & Co Advocates vs East African Standard (No 2) [2002] KLR 63** and **Focin Motorcycle Co. Ltd vs Ann Wambui Wangui & Another [2018] eKLR.**
8. Counsel submitted that the explanation given by the Applicant of lack of funds within the thirty-days is cogent and the Respondent will suffer no prejudice if the application is allowed. Counsel relied on provisions of Section 80 of the Civil Procedure Act, Order 45 Rule 1 of the Civil Procedure Rules and the cases of **Mutisya (Suing as the personal representative of the Estate of Simon Wambua Makau (Dcd) vs Macahria t/a Three Bins Services & another [2023] KECA 234 (KLR)** and **Salat vs Independent Electoral and Boundaries Commission & 7 others [2014] KESC 12 (KLR).**

RESPONDENT'S SUBMISSIONS

9. Ms. Gathecha, counsel for the Respondent filed submissions dated 6th November, 2025, and relied on Section 79G of the Civil Procedure Act and Order 50 Rule 6 and submitted that an appeal must be filed within thirty days and any delay beyond that must be satisfactorily explained. Counsel submitted that the Applicants have offered no justification for this delay and relied on the case of **Nicholas Kiptoo arap Korir Salat vs IEBC & 7 others [2014] eKLR.**

10. Counsel submitted that the proper remedy for any grievance about the ruling of 24th January, 2025 would be an appeal and not a de facto review of an interlocutory order. Counsel relied on the case of **Juma vs Pinkertons' Kenya Ltd [2025] KEELRC 2161 (KLR)** and further submitted that the Applicants have not met the prerequisites set out in Order 42 Rule 6 of the Civil Procedure Rules. Counsel relied on the case of **Fazal vs Lias [2024] KEHC 8175 (KLR)** and urged the court to dismiss the application with costs.

ANALYSIS AND DETERMINATION

11. The issue for determination is whether the application dated 18th August, 2025, has merit. The court notes that the court's ruling of 24th January, 2025, was for stay of execution in respect of orders emanating from the judgment and decree in Nakuru CMELC No 142 of 2020, and extension of time to file an appeal out of time. The court heard the Application and in the interest of justice granted the orders on condition that the Applicants file the Appeal within 30 days and a deposit of Kshs. 200,000/ in a joint interest earning account.
12. The Applicants have waited for 7 months to file this application without giving any reasonable or satisfactory explanation as to the delay. The court has to balance the rights of both parties. The court had given the Applicants a chance to file their appeal out of time which they squandered. This is not a suitable application for review as per Order 45 of the Civil Procedure Rules.
13. In the case of **Evan Bwire V Andrew Aginda Civil Appeal No. 147 of 2006** cited with approval the case of **Stephen Githua Kimani V Nancy Wanjira Waruingi T/A Providence Auctioneers (2016) eKLR** the Court of Appeal held as follows:

“An application for review will only be allowed on strong grounds particularly if its effect will amount to re-opening the

application or case afresh. In other words, I find no material before me to demonstrate that the applicant has demonstrated the existence of new evidence which he could not get even after exercising due diligence.”

14. Consequently, I find that this application lacks merit and is therefore dismissed with costs to the Respondent.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 5TH DAY OF JANUARY 2026.

M. A. ODENY

JUDGE