

**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT THIKA**

**ELC MISCELLANEOUS APPLICATION NO. E002 OF 2025**

**PETER MUTITU BARUH .....**  
**APPLICANT**

**VERSUS**

**PETER MATHU NDERITO, AMOS MWANIKI &  
DANIEL KAHU NGIGE ..... 1<sup>ST</sup>**  
**RESPONDENT**

**COUNTY EXECUTIVE COMMITTEE MEMBER, LANDS, HOUSING,  
PHYSICAL PLANNING MUNICIPAL & ADMINISTRATION & URBAN  
DEVELOPMENT (KIAMBU COUNTY) ..... 2<sup>ND</sup>**  
**RESPONDENT**

**DIRECTOR OF PHYSICAL PLANNING, KIAMBU ..... 3<sup>RD</sup>**  
**RESPONDENT**

**COUNTY GOVERNMENT OF KIAMBU ..... 4<sup>TH</sup>**  
**RESPONDENT**

**RULING**

1. By a Notice of Motion dated 9<sup>th</sup> April 2025, the Appellant filed an application seeking a stay of implementation of the decision of the Kiambu County Physical and Land Use Planning Liaison Committee delivered on 20<sup>th</sup> December 2024 and leave to appeal out of time.

2. The application is premised on the grounds stated on the face of the Notice of Motion and the Applicant's supporting Affidavit sworn on the 9<sup>th</sup> April 2025.
3. The gist of the Applicant's application is that the appeal against the decision of the Kiambu County Physical and Land Use Planning Liaison Committee was erroneously filed at the High Court under the mistaken impression that it had an Environment and Land Division. By the time then Applicant's counsel was informed that there was no Environment ad Land Court at Kiambu, the time for filing the appeal had lapsed.
4. He further deposed that if the decision of the Liaison Committee was not stayed, he would suffer extreme prejudice as he had spent colossal sums of money towards payment of various fees in order to obtain permission to proceed with construction.
5. He added that the delay in filing the appeal was no willful but it was due to the mistake on the part of his advocate.
6. He contended that the Liaison committee did not have the jurisdiction to handle the matter as the development permission was granted on 31.1.2023 and the appeal to the Committee ought to have been filed within 14 days, that is, by 14.2.23. However, the said appeal was filed on 20.11.24 which was way past the time for appeal provided under the Physical and Land Use Planning Act.

The Committee therefore misconstrued the law by admitting and hearing the appeal.

7. The 4<sup>th</sup> Respondent opposed the application through its Grounds of Opposition dated 22<sup>nd</sup> May 2025. In the said Grounds of opposition, the 4<sup>th</sup> Respondent stated that the Applicant had not demonstrated sufficient cause to warrant the exercise of the court's discretion to enlarge time or grant a stay.
8. The 4<sup>th</sup> Respondent pointed out that ignorance of law was not a justifiable ground and the fact that the Applicant's counsel was unaware of the proper forum was untenable. Further, that the Applicant had not acted diligently after the error was discovered and he only withdrew the matter after the 4<sup>th</sup> Respondent filed a Notice of Preliminary Objection in Kiambu High Court citing lack of jurisdiction.
9. The 4<sup>th</sup> Respondent stated that no triable issue had been disclosed and granting the stay would prejudice its legitimate interests. It added that public interest demands finality in planning disputes. That the Liaison Committee's decision was aimed at promoting lawful land use and planning regulation and it should not be suspended on weak or unmeritorious grounds.
10. The court directed that the application be canvassed through written submissions and the Applicant duly complied. At the time

of writing this ruling, the 4<sup>th</sup> Respondent had not filed their submissions.

### **ANALYSIS AND DETERMINATION**

11. I have considered the application, 4<sup>th</sup> Respondent's Grounds of Opposition and the Applicant's submissions and in my view two issues arise for determination;

- i) Whether the Applicant should be granted leave to file an appeal against the decision of the Kiambu County Physical and Land Use Planning Liaison Committee out of time and*
- ii) Whether the implementation of the decision of the Liaison Committee ought to be stayed pending appeal.*

12. The principles that guide the court in the exercise of its discretion to extend time for filing an appeal out of time were laid down by the Supreme Court in the case of **Nicholas Kiptoo Arap Salat v IEBC & 7 Others (2014) eKLR**, as follows:

***"... 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:***

- a. ***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;***
- b. ***a party who seeks extension of time has the burden of laying a basis, to the satisfaction of the Court;***
- c. ***whether the Court should exercise the discretion to extend time, is a consideration to be made on a case- to- case basis;***
- d. ***where there is a reasonable [cause] for the delay, [the same should be expressed] to the satisfaction of the Court;***
- e. ***whether there will be any prejudice suffered by the respondents, if extension is granted;***
- f. ***whether the application has been brought without undue delay; and***
- g. ***whether in certain cases, like election petitions, public interest should be a consideration for extending time”*** [emphasis supplied].

13. In an application for extension of time, the Applicant must explain the delay in filing the appeal to the satisfaction of the court. In the instant case, the Applicant has stated that the appeal was initially erroneously filed in Kiambu High Court before it was withdrawn and filed in this court. He attributes the error to his advocate who

apparently was misadvised by the Kiambu High Court Registry staff. Although I find this explanation hard to believe as counsel ought to know better, I am cognizant of the provisions of Article 159 (2) (d) of the Constitution of Kenya which enjoins the court to administer justice without undue regard to technicalities. I shall therefore exercise my discretion in favour of the applicant.

14. With regard to the application for stay, Order 42 Rule 6 of the Civil Procedure Rules sets out the principles that should guide the court in considering an application for stay pending appeal. In particular Order 42 Rule 6(2) provides as follows:

*(2) No order for stay of execution shall be made under sub-rule (1) unless—*

*(a) the court is satisfied that substantial loss may result to the applicant unless the order is made and that the application has been made without unreasonable delay; and*

*(b) such security as the court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the applicant.*

15. The Applicant's position is that he will suffer substantial loss if a stay is not granted as he has spent a colossal sum of money to obtain the development permission. On its part the 4<sup>th</sup> Respondent contends that the Liaison Committee arrived at the right decision

aimed at promoting lawful land use and planning regulation and it should not be suspended on weak or unmeritorious grounds.

16. I have perused the decision of the Liaison Committee and the draft Memorandum of Appeal and I note that the Applicant has raised the issue of the Liaison Committee's jurisdiction in view of the fact that the time for lodging the appeal with the said committee had elapsed. In my considered opinion, the intended appeal is therefore arguable.

17. Accordingly, I find merit in the application and I allow it and make the following orders:

***a) The Record of appeal shall be filed within 14 days form the date of this ruling.***

***b) The determination made on 20<sup>th</sup> December 2024 by the Kiambu County Physical and Land Use Planning Liaison Committee is hereby stayed pending the hearing and determination of the intended appeal.***

***c) The costs of this application shall abide the outcome of the appeal.***

**Dated, signed and delivered virtually at Thika this 20th day of January 2026.**

**J. M ONYANGO  
JUDGE**

**In the presence of:**

1. Mr Benji for the Applicant
2. Mr Mwangi for the 1st Respondent

Court Assistant: Hinga

ORIGINAL