

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ELCC NO. E412 OF 2022

JOHN KIARIE NJOROGE
(suing as administrator
of the Estate of NJOROGE NGUGI).....1st
PLAINTIFF/RESPONDENT

LUCY WANJIRU NJOROGE
(suing as the administrator
of NJOROGE NGUGI).....2nd
PLAINTIFF/RESPONDENT

-VERSUS-

NOOR HAJI
ALI.....DEFENDANT/APPLICANT

RULING

1. The defendant/applicant has filed three applications, which will be heard and determined concurrently. The first notice of motion dated 9th July, 2025 is expressed to be brought under **Sections 1A, 1B and 3A of the Civil Procedure Act, Order 42 Rule 6 and Order 51 Rule 1 of the Civil Procedure Rules** seeking the following orders:-

1. The firm of Ondieki A. Advocates be granted leave to come on record for the defendant/ applicant in place of the previous advocates, after entry of judgment herein.

2. Spent.

3. Pending the hearing and determination of the intended appeal to the Court of Appeal, this

Honourable Court be pleased to grant a stay of execution of the judgment delivered on 21st November, 2024 and all consequential orders thereto.

4. This Honourable Court be pleased to enlarge the time within which the Defendant/Applicant may file and serve a Notice of Appeal against the judgment delivered on 21st November, 2024.

5. The Notice of Appeal dated 9th July, 2025 be deemed as duly filed and properly on record, upon enlargement of the time sought.

6. Costs of this application be provided for.

2. The application is premised on the grounds on its face, and supported by the affidavit of the defendant/applicant sworn on even date. The defendant/applicant deposed that judgment in this suit was delivered by the court on 21st of November, 2024 in favour of the plaintiffs/respondent, and that the court ordered for the nullification/revocation of the certificate of title registered in his name with respect to Land Reference No. 367 Plot 433, effectively depriving him of the said property.

3. Being dissatisfied with the decision of the court, the defendant/applicant intends to file an appeal, but was not able to

file the notice of appeal within the prescribed 14 days by Rule 75(2) of the Court of Appeal Rules, due to unforeseen medical circumstances that forced him to travel abroad to the United Kingdom and to Germany, to seek for medical care, rendering him unable to instruct counsel to file the appeal.

4. The defendant/applicant further deposed that the delay is excusable and adequately explained, nor was it negligent or deliberate as immediately upon his return to the country and resumption of stable health, he took proactive steps to instruct counsel. Further, that the intended appeal is arguable and meritorious and raises pertinent questions of both law and fact.
5. The defendant/applicant is apprehensive that if stay of execution is not granted, there is an imminent risk that the plaintiffs/respondents will proceed to execute the decree, and render the intended appeal nugatory, adding that he stands to suffer irreparable harm and substantial loss if stay is not granted. The defendant/applicant expressed willingness to comply with any conditions that the court may issue including security for costs, as he prayed for his application to be allowed.

6. The 2nd application is the notice of motion dated 16th July, 2025 expressed to be brought under **Sections 1A,1B and 3A** of the **Civil Procedure Act, Order 45 Rule 1** and **Order 51 Rule 1** of the **Civil Procedure Rules** and seeks for the following orders:-

1. Spent.

2. This Honourable Court be pleased to review its order issued on 13th July, 2025 and proceed to certify the application dated 9th July, 2025 as urgent and issue an interim order in terms of prayer 2 of the said application.

3. Costs of this application be provided for.

7. The application is premised on the grounds on its face and supported by the affidavit of the defendant/applicant sworn on even date. The defendant/applicant deposed that this court issued its orders on the 13th of July, 2025 on their previous application dated 9th July, 2025 declining to certify the same as urgent and further declining to grant an interim stay of execution pending the hearing and determination of the application.

8. The defendant/applicant further deposed that on the eve of 12th July, 2025 a group of unknown individuals tried to forcefully gain access to the suit property, claiming that they have been instructed to provide security to the new owners. He deposed that this event repeated itself on the 13th and 14th of July, 2025. That as advised by

his advocates on record, this court has the jurisdiction to review its order based on new, important and relevant matters that have occurred since the application was filed and orders issued by the court.

9. He expressed that no prejudice will be suffered by the decree-holder if review is granted by the court, but that he stands to suffer grave injustice and loss if the prayers sought are not granted.
10. The 3rd application dated 19th August, 2025 is expressed to be brought under **Sections 1A, 1B and 3A** of the **Civil Procedure Act, Order 22 Rules 22 and 26, Order 45 Rule 1 and Order 51 Rule 1** of the **Civil Procedure Rules** seeking for the following orders:
 1. *Spent.*
 2. *Pending the delivery of the ruling of the application dated 9th July, 2025 on 20th November, 2025 this Honourable Court be pleased to issue an interim order of stay of execution of the decree and judgment delivered on 21st November, 2024 together with all consequential orders arising therefrom.*
 3. *Costs of this application be provided in the cause.*
11. The application was supported by the affidavit of the defendant/applicant sworn on even date. The defendant/applicant

reiterated the contents of the previous application that on the evening of 12th July, 2025 a group of unknown individuals tried to forcefully gain access to the suit property, claiming that they have been instructed to provide security to the new owners. This event repeated itself on the 13th and 14th of July, 2025.

- 12.** In addition, that there were forceful attempts to gain entry into the suit property on the 3rd of August, 2025. He stated that he is apprehensive that the invasions to the suit property will not stop until this court grants stay of execution against its judgment and decree of 21st November, 2024.
- 13.** The plaintiffs/respondents jointly filed their replying affidavit sworn on 22nd July, 2025 in response and in opposition to the application dated 9th July, 2025. They deposed that the supporting affidavit is defective as it is sworn by someone different from the one who signed it, and who states that he is the director of a company while the defendant/applicant is not a company.
- 14.** In addition to this, they deposed that the defendant/applicant has not shown any intention to appeal the judgment of this court as it has been over 200 days since delivery, despite being given 90 days stay of execution. They also believe that this application ought to be filed in the Court of Appeal and not the trial court.

- 15.** The plaintiffs/respondents also noted that on the 21st December, 2024 their advocates on record received a letter from the then Advocates for the defendant/applicant on record, that they had ceased acting for him as the defendant/applicant had instructed the firm of Ahmednassir Abdullahi LLP. That by the time the defendant/applicant is said to have instructed the new advocates on the 16th December, 2024 as dated in the letter, the statutory period of 14 days for filing a notice of appeal had already lapsed, also noting that he had the capacity to instruct advocates at this time.
- 16.** The plaintiffs/respondents claim malice and mischief in this application, noting that the defendant/applicant did not make any steps to file an appeal when the application dated 10th February, 2025 was ongoing, noting that this instant application was made 2 days after the aforesaid application was dismissed on the 8th of July, 2025, stating that this shows that the delay was intentional.
- 17.** Further, they deposed that the medical documents attached to the application are illegible and in a foreign language, with no translation provided and no authentication provided by a qualified medical doctor. They deposed that no document produced shows

that the defendant/applicant left the country in the year 2024 after judgment was delivered, and that the only document produced that indicates that he left the country is on 19th February, 2025 about 90 days after judgment was delivered, after having instructed advocates to represent him in the appeal, therefore he cannot claim that the delay was as a result of his travels. They view the acts of the defendant/applicant as calculated and aimed at frustrating the ends of justice, stating that he has not provided sufficient reasons for the delay and has failed to attain the threshold for the grant of the orders sought.

- 18.** With regard to the application dated 15th August, 2025 the plaintiffs/respondents filed their joint replying affidavit sworn on the 22nd of September, 2025. They deposed that the said application is moot as it seeks interim substantive orders past the ex-parte stage. That noting that there is another application pending determination dated 9th July, 2025, they deposed that the multiplicity of applications is aimed at defeating justice and delaying the execution of their judgment. They further deposed that the defendant's/applicant's allegations are absurd, and highlighted that he has not provided any evidence to show that it is them who organized the alleged raids. They termed the application dated 15th August, 2025 as res judicata and stated that the only

recourse that the defendant/applicant has is to seek a review of the court's order.

- 19.** The defendant/applicant filed a supplementary affidavit sworn on 30th July, 2025. The defendant/applicant deposed that there was a typo in the manner in which his name was captured in the introductory part of the supporting affidavit to the application dated 9th July, 2025 stating that the mistake of counsel should not be visited upon the litigant. He reiterated that the delay in filing the intended appeal was not negligent nor deliberate, deposing that the same was caused by circumstances beyond his control.
- 20.** The defendant/applicant denied the respondents' claim accusing him of collusion, and stated that they have not put forward any evidence on the same. He stated that his application has been made in utmost good faith and raises issues that warrant the favourable intervention of this court.
- 21.** The applications were canvassed through written submissions. The defendant/applicant filed two separate sets of written submissions both dated 31st October, 2025. By the time of writing this ruling, the plaintiffs/respondents had not filed their written submissions.

22. I have considered the three applications, the replies thereof, and the written submissions filed by the defendant/applicant. In my view, the issues arising for determination are as follows:-

1) Whether this court should grant the defendant/ applicant extension of time to file his Notice of Appeal and intended appeal.

2) Whether stay of execution of this court judgment delivered on 21st November, 2024 should issue pending the hearing and determination of the intended appeal.

3) Whether the court should review its orders of 13th July, 2025.

23. Before I delve further, I need to address the issue with regard to the person of the defendant/applicant which I note that the plaintiffs/respondents had raised concerning the defendant's/applicant's supporting affidavit to the application dated 9th July, 2025 as having two different names; Ali Noor Ibrahim and signed by Noor Haji Ali, which the defendant/applicant stated is a simple typographical error and noted that the mistake of counsel should not be visited upon him. The court will proceed to ignore the same error as the defendant/applicant has confirmed that he is the one who signed the supporting affidavit.

24. On the first issue, **Rule 61** of the **Court of Appeal Rules** requires one who intends to file an appeal before the Court of Appeal to file a notice of appeal within 14 days of the decision against which they intend to appeal. The cited provision states as hereunder:-

“A person who desires to appeal to the court shall give notice in writing, which shall be lodged in six copies with the registrar of the superior court at the place where the decision against which it is desired to appeal was given, within fourteen days after the date of that decision, and the notice of appeal shall institute the appeal.”

25. **Rule 64(5)(a)** further provides that:-

“Notwithstanding subrule (1), the registrar of the superior court shall not prepare the record of appeal where—

(a) the notice of appeal has been lodged out of time, until the registrar has been notified that the time has been extended by order of the superior court or of the court or the President otherwise directs.”

26. A significant amount of time has passed since this court rendered its judgment on the 21st November, 2024 to the time of the filing of the notice of motion dated 9th July, 2025. It is also evident from the above provision in **Rule 64(5)(a)** of the **Court of Appeal Rules** that a notice of appeal whose time has lapsed for filing must first be granted extension of time to be filed, which is a discretionary

power of the court. The learned counsel for the defendant/ applicant cited the holding of the court in the authority of **Gerald Muriithi v Wamugunda Muriuki & Another [2019] eKLR**, in which the court held that:-

“Until a Notice of Appeal is filed, the appellate jurisdiction of the Court of Appeal is not invoked. The High Court retains residual jurisdiction to make such orders as may be necessary for the ends of justice, including extension of time to file a Notice of Appeal.”

27. The locus classicus precedent for extension of time is the case of **Leo Sila Mutiso v Hellen Wangari Mwangi [(Civil Application No Nai 255 of 1997) (unreported)]**, where the court held as follows:

“It is now well settled that the decision whether or not to extend the time for appealing is essentially discretionary. It is also well settled that in general the matters which this court takes into account in deciding whether to grant an extension of time are: first the length of the delay, secondly, the reason for the delay; thirdly (possibly) the chances of the appeal succeeding if the application is granted; and, fourthly, the degree of prejudice to the respondent if the application is granted.”

28. In the case of **Aviation Cargo Support Limited v St. Mark Freight Services Limited [2014] eKLR** the court held that:

“The order whether or not to grant extension of time or leave to file and serve record of appeal out of time is discretionary. Such discretion is exercised judicially with a view to doing justice. Each case depends on its own merit. For the court to exercise its discretion in favour of an applicant, the latter must demonstrate to the court that the delay in lodging the record of appeal is not inordinate and where it is inordinate the applicant must give plausible explanation to the satisfaction of the court why it occurred and what steps the applicant took to ensure that it came to court as soon as was practicable.”

29. Similarly, the Supreme Court in **Nicholas Kiptoo Arap Korir Salat v Independent Electoral and Boundaries Commission & 7 Others [2014] eKLR** set out guiding principles for extension of time as follows:

“Extension of time is not a right of a party. It is an equitable remedy that is available to a deserving party at the discretion of the court... the court must consider the length of the delay, the reason for the delay, the chances of the appeal succeeding, and the degree of prejudice to the respondent.”

30. In this case, the length of delay from the delivery of the decision to the filing of the instant application is about 8 months, which is a significant period of time that has passed. The reason for delay has been given that the defendant/applicant was unwell and had to

travel abroad to seek treatment, thus rendering him unable to instruct counsel to represent him to file the appeal.

- 31.** Having considered the documents in support annexed to the defendant/applicant's supporting affidavit to the notice of motion dated 9th July, 2025, I note that several medical records are written in the German language, with no translation provided for the benefit of the court. I also note a flight check-in notification for a flight scheduled on the 19th of February, 2025 to London Heathrow Airport, by which date the time for filing the notice of appeal had already lapsed.
- 32.** The court also notes that when judgment was delivered, the defendant/applicant was granted 90 days stay. In my view, this was sufficient time to instruct counsel to file an appeal if the defendant/applicant was truly aggrieved by the decision of the court, despite being unwell, as the court notes that the defendant/applicant had an advocate on record at the time. Instructing counsel would mean nothing more than informing counsel that he wishes to appeal, and would not require significant effort on the defendant's/applicant's part. Thus, the court deems the application for extension of time lacking in merit as it is without a justifiable explanation of the delay.

33. On the second issue, and having found that no sufficient explanation has been given for the delay in filing the notice of appeal, I find that there would be no need to consider whether or not stay of execution should issue as it would be an exercise in futility with no purpose at all.
34. On the third issue, the defendant/applicant seeks review of the orders of the court given on 13th July, 2025 dated 9th July, 2025 declining to certify the same as urgent and further declining to grant an interim stay of execution pending the hearing and determination of the application.
35. The statutory provisions that govern orders of review and setting aside are **Section 80** of the **Civil Procedure Act** and **Order 45** of the **Civil Procedure Rules**. **Section 80** of the Act provides that:-
- “Any person who considers himself aggrieved—***
- (a) by a decree or order from which an appeal is allowed by this Act, but from which no appeal has been preferred; or***
- (b) by a decree or order from which no appeal is allowed by this Act, may apply for a review of judgment to the court which passed the decree or made the***

order, and the court may make such order thereon as it thinks fit”

36. **Order 45 Rule 1** of the **Civil Procedure Rules** provides that:-

“Any person considering himself aggrieved—

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred; or

(b) by a decree or order from which no appeal is hereby allowed, and who from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or the order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree or order, may apply for a review of judgment to the court which passed the decree or made the order without unreasonable delay.”

37. Mativo J (as he then was) in the case of **Republic v Advocates Disciplinary Tribunal Ex parte Apollo Mboya [2019] eKLR** elaborated the principles of review to the effect that:-

“My finding is fortified by the holding in the case of Evan Bwire vs Andrew Nginda where the court held

that 'an application for review will only be allowed on very strong grounds particularly if its effect will amount to re-opening the application or case a fresh. The principles which can be culled out from the above noted authorities are:-

- i. A court can review its decision on either of the grounds enumerated in Order 45 Rule 1 and not otherwise.***
- ii. The expression "any other sufficient reason" appearing in Order 45 Rule 1 has to be interpreted in the light of other specified grounds.***
- iii. An error which is not self-evident and which can be discovered by a long process of reasoning cannot be treated as an error apparent on the face of record justifying exercise of power under Section 80.***
- iv. An erroneous order/decision cannot be corrected in the guise of exercise of power of review.***
- v. A decision/order cannot be reviewed under Section 80 on the basis of subsequent decision/judgment of a coordinate or larger bench of the tribunal or of a superior court.***
- vi. While considering an application for review, the court must confine its adjudication with reference to material, which was available at the time of initial decision. The happening of some***

subsequent event or development cannot be taken note of for declaring the initial order/decision as vitiated by an error apparent.

- vii. Mere discovery of new or important matter or evidence is not sufficient ground for review. The party seeking review has also to show that such matter or evidence was not within its knowledge and even after the exercise of due diligence, the same could not be produced before the court/tribunal earlier.***

- viii. A mistake or an error apparent on the face of the record means a mistake or an error, which is prima-facie visible and does not require any detailed examination. In the present case the petitioner has not been able to point out any error apparent on the face of the record.***

- ix. Section 80 of the Civil Procedure Code provides for a substantive power of review by a civil court and consequently by the appellate courts. The words occurring in Section 80 mean subject to such conditions and limitations as may be prescribed thereof and for the said purpose, the procedural conditions contained in Order 45 Rule 1 must be taken into consideration. Section 80 of the Civil Procedure Code does not prescribe any limitation on the power of the court, but such limitations have been provided for in Order 45 Rule 1.***

x. The power of a civil court to review its judgment/decision is traceable in Section 80 CPC. The grounds on which review can be sought are enumerated in Order 45 Rule 1."

38. The defendant/applicant having not attached evidence of a new or important matter or evidence to warrant an order for review, the application fails to reach the threshold of granting an order of review.

39. For the above reasons, this court finds no merit in the defendant's/ applicant's notices of motion dated 9th July, 2025 16th July, 2025 and 15th August, 2025 and dismisses all of them with costs to the plaintiffs/ respondents.

It is so ordered.

**DATED, SIGNED & DELIVERED VIRTUALLY
THIS 19TH DAY OF JANUARY, 2026.**

**HON. MBOGO C.G.
JUDGE
19/01/2026.**

In the presence of:

Ms. Vena Aron - Court assistant

*Mr. Rukwaro holding brief for Mr. Kimani for the
Plaintiffs/Respondents*

Mr. Siwolo for the Defendant/Applicant