

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ELCA NO. E002 OF 2026

SAMUEL KIVUMBU KATSIKALI
JOMO KATSIKALI KIVUMBU.....
PLAINTIFFS

VERSUS

DOUGHLAS CHARO & 14 OTHERS
DEFENDANTS

RULING

1. The Notice of Motion dated **6th January, 2026** is seeking the following orders: The application dated 13th May 2025 seeks extension of time for the 3rd defendant to file her Notice of Appeal, and also an order staying execution of the judgment in the present suit pending the hearing and determination of the intended appeal.
2. The grounds upon which the application is made are that the 3rd defendant’s advocate was not present in court when the judgment was delivered; that the defendant became aware of the judgment dated 30th April 2025 on 13th May 2025. It is also stated that the appeal may be rendered nugatory if an order of stay of execution of the judgment is not granted and the applicant would suffer irreparable damage
3. The application is opposed. The 1st plaintiff filed a replying affidavit dated 11th June 2025 stating as follows: that there is no appeal on the record, the time to file a Memorandum of Appeal lapsed on 14th May 2025; that when the judgment date was given on 17th February 2025, Ms. Mugo, the former counsel of the 3rd defendant was in court, and the court indicated

that judgment would be delivered by the CTS platform. The 3rd defendant's advocate was therefore aware of the judgment date and should have followed up on the judgment on the CTS. In the event her former advocate actually failed to follow up on the matter, the 3rd defendant has not demonstrated the steps she by herself took with due diligence to follow up on the judgment; that if granted, a stay of execution will deny the plaintiffs the fruits of their hard-earned judgment.

4. The applicant filed submissions dated 17th October 2025 which I have taken notice of while preparing this ruling. The respondent also filed submissions dated 10th June 2025 and supplementary submissions dated 5th January 2026. I have also considered those submissions in preparing this ruling.

ANALYSIS AND DETERMINATION.

5. The issues arising for determination in this application are as follows:
 - a. Whether extension of time to file notice of appeal should be granted;**
 - b. Whether stay of execution should be granted;**
 - c. Who should be at the costs.**
6. Regarding the first issue the mainstay of the defence by the respondent is that there is no appeal in place to justify the seeking of the orders sought in the application. I have perused the court record and found that it is true that no Notice of Appeal has been filed. However, that objection can only affect the application for stay of execution which, in view of **Order 42**

Rule 6(1) and 6(4), cannot be granted in the absence of a Notice of Appeal.

7. Regarding extension of time, I have considered that the present application was filed on 13th May 2025. The respondent has admitted that by the time the application was being filed, the time prescribed for the filing of a Notice of Appeal had not expired; that it was mistake on the part of the counsel for the applicant to file the application instead of filing the Notice of Appeal.
8. I agree entirely with this submission. However, following the footsteps of the court of Philip Keipto Chemwolo & another v Augustine Kubende [1986] eKLR, Mugachia v Mwakibundu [1984] eKLR, Joseph Mweteri Igweta -vs- Mukira M'Ethare & Attorney General 2002 eKLR, I decline to punish the 3rd defendant for the mistakes of her erstwhile counsel and I find that this is a proper case for the granting of extension of time to file a Notice of Appeal.
9. I therefore allow the application dated 13/5/2025 in terms of prayer **number 3** they and I order that the 3rd defendant shall file and serve a Notice of Appeal within **14 days** from the date of this order. **Prayer No 5** is disallowed. The costs of the application shall be costs in their appeal.

Dated, signed and delivered at Malindi on this 27th day of January 2026.



**MWANGI NJORGE,
JUDGE, ELC, MALINDI.**