



Nyakinyua Mwiangiri Mwimuto Co. Ltd v Thairu & another (Sued as Legal Administrators of the Estate of the Late Priscillah Wangari Thairu) (Environment and Land Case 65 of 2018) [2026] KEELC 364 (KLR) (29 January 2026) (Ruling)

Neutral citation: [2026] KEELC 364 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAROK
ENVIRONMENT AND LAND CASE 65 OF 2018
LN GACHERU, J
JANUARY 29, 2026**

BETWEEN

NYAKINYUA MWIHANGIRI MWIMUTO CO. LTD PLAINTIFF

AND

ANN WANGARI THAIRU 1ST DEFENDANT

JOSEPH NDUNGU THAIRU 2ND DEFENDANT

**SUED AS LEGAL ADMINISTRATORS OF THE ESTATE OF THE LATE
PRISCILLAH WANGARI THAIRU**

RULING

1. The matter for determination is the Notice of Motion Application dated 15th August 2025, brought by the Plaintiff/Applicant under various provisions of law, among them Order 9 Rule 9 of the [Civil Procedure Act](#), Sections 1A & B of the [Civil Procedure Act](#), Order 42 Rule 6 of the Civil Procedure Rules, and all enabling provisions of the law. The Plaintiff/Applicant has sought for the following prayers;
 - i. That the Law Firm of Gathoni & Co Advocates be granted leave to come on record for the plaintiff;
 - ii. That the court be pleased to grant the Plaintiff/Applicant leave to file the Appeal out of time, and enlarge time for filing and serve the Notice of Appeal against the judgement on this case delivered on 19th May 2023;
 - iii. That the court be pleased to issue a stay of execution of the judgment of this court delivered on 19th May 2023, pending the hearing and determination of the appeal;
 - iv. That court do issue such orders as it may deem fit to grant;



- v. That costs of the application be borne by the Respondent.
2. The application is supported by the grounds set out on the face of the Application and on the Supporting Affidavit of Geoffrey Njogu Njoroge, the chairman of the Plaintiff Company.
 3. Among the grounds in support of the Application are; that judgment in this matter was delivered virtually by Justice Mohammed Kullow sitting at Migori ELC on 19th May 2023, in favour of the Plaintiff herein; that the physical file and the Judgment were not availed at Narok ELC Registry until 5th August 2025, when the same was uploaded in the CTS; that the Plaintiff had a legitimate expectation that the written judgment would be similar to the judgment delivered virtually by the judge on 19th May 2023, that upon perusal of the written judgment, the Plaintiff realized that the said written judgment was different from the judgment delivered virtually as on 19th May 2023, as the court dismissed the Plaintiff's case and allowed the Defendant's Counter-claim.
 4. That being dissatisfied with the said written judgment of the court, the Plaintiff wishes to prefer an appeal, but time has since lapsed for the filing an appeal; the Plaintiff therefore seeks for stay of execution of the said written judgment pending the hearing and determination of the intended appeal; that the Plaintiff has a merited appeal with an overwhelming chance of success, which would be rendered nugatory if stay orders are not granted;
 5. That the Respondent will not suffer any prejudice if the application is allowed, but the Applicant stands to suffer irreparable loss and damage if the orders sought are not granted; that it is in the interest of justice and fairness that the orders sought be granted; as the Plaintiff's members are apprehensive that if no stay orders are issued, the Defendant will proceed and execute the written judgement to the detriment of the members.
 6. In his Supporting Affidavit, Geoffrey Njogu Njoroge reiterated the contents of the grounds in support of the application and urged the court to allow the instant application for the interest of justice.
 7. The Application is opposed by the Defendant/Respondent herein through the Replying Affidavit of Joseph Ndungu Thairu, one of the administrators of the estate of Priscilla Wangare Thairu, whom he averred was one of the registered owners of the suit land Cis Mara/Nkoben/56.
 8. He confirmed that the dispute herein was determined by Justice Mohammed Kullow vide a Judgment delivered on 19th May 2023, wherein the advocates were absent, having not been notified of the said judgment date; that his advocate wrote to Narok ELC requesting for the said Judgment, and a written judgment was later issued, and therefore there can be no virtual judgment, but only a written judgment as stipulated by the law.
 9. It was his claim that the chairman of the Plaintiff has all along had ulterior motives over the suit land, since despite not having received the written judgment, he went ahead and illegally sub divided the suit land into portions that were not in tandem with what each member purchased. That the chairman even transferred land to none members like one Robert Kiplangat Mutai, who got a portion of land from the suit land.
 10. He claimed that since there is now a written judgment, it will be in order that the title of Cis Mara / Nkoben/56, goes back to its original name of Priscilla Wangare Thairu, Mbugua Kahi and Patrick Waweru to enable them to have the same subdivided into 62 individual members as per the Judgment.
 11. It was his allegations that the Plaintiff's ultimate motive is to cause chaos and to subsequently have the 62 beneficiaries ejected from their portions of land. Further, that the Plaintiff's assertion that the



original land parcel No Cis Mara/Nkobon/56 is still in existence is misleading since the suit land was subdivided into various parcels of land as was evidenced by annexures JNT5.

12. He also claimed that the Plaintiff has concealed information to the effect that the suit land has since he knew the land has been subdivided, though it was illegally done. Further, that the plaintiff/Applicant has not shown any reason as to how they are going to loose on account of the judgement now on record to warrant for leave to file appeal out of time.
13. He urged the court to dismiss the instant application the instant application with costs to the defendant/Respondent.
14. The Plaintiff/Applicant filed a further Affidavit sworn by Geoffrey Njogu Njoroge, who averred that on 19th May 2023, when the Judgment was delivered by Justice Mohammed Kullow, he was present, but both advocates were absent. That the Judge clearly called out the case number and the parties and after a brief exchange, he delivered the judgment virtually and allowed their case. He annexed an Audio recording of the delivery of the Judgment as GNN 7 and certificate of electronic evidence dated 30th September 2025.
15. He denied that he had any ulterior motive, and reiterated that he has always acted in good faith to protect the interest of the Plaintiff's members and there has been no complaint by any of the members.
16. He contended that the subdivision of the suit land was done after the resolution of the members on the strength of the virtual Judgment delivered on 19th May 2023. That the Robert Kiplagat Mutai is among the officials and a member of the Plaintiff, and the Plaintiff members had a legitimate expectation that the Judgment delivered virtually would be in tandem with the written Judgment that the court was schedule to avail.
17. It was his contention that the Plaintiff's members are interested in having their day in court as most of them are in actual occupation of the land, and if any of the Defendant's members are in occupation, then status quo should be maintained until the determination of the intended appeal. That even after the virtual Judgment, there has been no chaos on the land, and that status quo should be maintained by both parties.
18. Further, that he has been informed by his advocate that the Defendants are keen to execute the Judgment of the court, which will be detrimental to the Plaintiff's members most of whom are in occupation of the land.
19. He was therefore apprehensive that if stay is not granted the Defendant/Respondent will evict the Plaintiff's members from their homes which are situated on the suit land, and demolish their homes and development thereon. This could cause irreversible damages which cannot be compensated by an award of damages. Therefore, he urged the court to grant stay of execution pending the hearing and determination of the intended appeal.
20. He reiterated that it is in the interest of justice that this application be allowed.
21. The Application was canvassed by way of written submissions. The Plaintiff/Applicant filed its submissions dated 30th September 2025, through Gathoni & Co Advocates and supplementary submissions dated 24th November 2025.
22. The Plaintiff/Applicant set out two issues for determination being;
 - a. whether to grant leave to the applicant to appeal out of time against the judgment delivered on 19th May 2023;



- b. whether to issue stay of execution of the judgement delivered on 19th May 2023 pending the hearing and determination of the appeal.
23. On whether the court should grant leave to appeal out of time, reliance was sought in various cases among them Leo Mutiso Vs Rose Hellen Wangari Mwangi civil Application No 255 of 1997(unreported) which was quoted in the case of Andrew Kiplagat Chemaringo Vs Paul Kipkorir Kibet(2018) KECA 701 (KLR).
24. The Plaintiff /Applicant submitted that the intended appeal has high chances of success and is not frivolous as evidenced by the Draft Memo of Appeal marked GNN6. Reliance was sought in the case of Joseph Gitabi Gachau &another vs Pioneer Holdings Ltd & 2 others Civil Application No 124 of 2008 and Stanley Kinyanjui Vs Tony Ketter & 5 Others (2013) eklr.
25. It was also submitted that the Respondent will not suffer any prejudice if the court allows the applicant leave to file appeal out of time as the status quo on the ground over the suit property would not be affected. Further that the Respondent can be compensated by an award of damages if the intended appeal does not succeed. It was also submitted that there has not been any inordinate delay in filing of the intended appeal, that although the virtual judgement was delivered on 19th May 2023, the written judgement was availed on 5th August 2025, and the instant application was filed on 15th August 2025.
26. On whether a stay of execution should issue pending the hearing and determination of the appeal, the applicant relied on Order 42 Rule 6(2) of the Civil Procedure Rules and the cases of Butt Vs Rent Restriction Tribunal (1982) KLR 417 and James Wangalwa & Another vs Agnes Naliaka Cheseto (2012) eklr and UAP Insurance Co vs Michael John Beckett (2004) eklr among others. The applicant urged the court to allow the prayer for stay of execution of the judgement in issue.
27. The Defendant /Respondent filed their written submissions dated 5th November 2025, and submitted that the plaintiff/Applicant has not met the conditions for grant of leave to appeal out of time and stay of execution pending Appeal.
28. The Defendant/Respondent relied on the case of Leo Sila Mutiso vs Rose Wangari Mwangi (supra) and Stanley Kangethe Kinyanjui Vs Tony Ketter & 5 Others (2013) eklr, wherein the court held that the applicant must demonstrate that the intended Appeal is arguable and not frivolous, and unless the stay is granted, the appeal will be rendered nugatory.
29. The Defendant submitted that the intended appeal is not arguable and is frivolous and no reasonable cause has been brought forth to show the purpose of the appeal. Further, that no resolution by members was brought forth to authorise the appeal since even the defendants were among the 62 members of the Plaintiff, and did not give authority.
30. The Defendant urged the court to dismiss the Plaintiff's application entirely with costs to the Respondent.
31. The above are the grounds for and against the instant application and the rival written submissions which this court has carefully considered together with the cited authorities and relevant provisions of law, and renders itself as follows;
32. From the court record, it is evident that the Judgment in issue was delivered on 19th May 2023, by Justice Mohammed Kullow. The Applicant alleged that the said Judgment was initially delivered virtually and the court allowed their prayers as sought in the plaint.



33. The Applicant further alleged that the written Judgment was never availed until 5th August 2025, when it was uploaded in the Judiciary CTS portal, and their surprise, their suit was dismissed and the Defendant's counter-claim allowed.
34. The Applicant alleged that failure to file the Appeal on time was caused by the fact that they were of the believe that the written Judgment would be in tandem with the judgment delivered virtually, and therefore there was no need to appeal, as they were the successful in the virtual Judgment.
35. Further, that by the time the written Judgment was availed on 5th August 2025, time to appeal had since lapsed and thus the filing of this Application which was done timeously on 15th August 2025. The Applicant also claimed that the Defendant/ Respondent is keen to execute the written Judgment, and thus the need to stay the execution on this Judgment pending the hearing of the intended appeal.
36. The issue for determination is whether the Plaintiff/Applicant is entitled to the prayers sought in the instant application.
37. The Plaintiff/Applicant anchored its application under Order 9 Rule 9 and Section 7 of the [Appellate Jurisdiction Act](#) Cap 9 of the Laws of Kenya. However, this court is not bound by the [Appellate Jurisdiction Act](#), but by the [Civil Procedure Act](#) and Rules 2010.
38. Order 9 Rule 9 of the Civil Procedure Rules deals with the change of advocate after Judgment. The applicant in its prayer No. 2 had sought for an order that the Law Firm of Gathoni & Co Advocates be granted leave to come on record for the plaintiff. This prayer was granted on and thus the prayer is now spent.
39. The Application is also anchored under Sections 1A & 1B of the Civil Procedure Rules which deal with the overriding objective of the [Civil Procedure Act](#), and the duty of the court to further the said overriding objective. Further, the application is anchored under Section 3A of the [Civil Procedure Act](#), which donates power to court to issue orders that are necessary for the end of justice and to prevent abuse of the court process.
40. Order 42 Rule 6(2) of the Civil Procedure Rules deal with the stay of execution, which prayer the applicant herein has sought. With the above in mind, the court will proceed and determines whether the applicant is deserving of the orders sought.
41. On the first limb of the prayers sought being leave to file an Appeal out of time, the main provision of law that guides the court is Section 79 G of the [Civil Procedure Act](#), which provides;
- “Every appeal from a subordinate court to the High Court shall be filed within a period of thirty days from the date of the decree or order appealed against, excluding from such period any time which the lower court may certify as having been requisite for the preparation and delivery to the appellant of a copy of the decree or order:
- Provided that an appeal may be admitted out of time if the appellant satisfies the court that he had good and sufficient cause for not filing the appeal in time.”
42. The application is anchored on Sections 1A,1B & 3A of the [Civil Procedure Act](#), which sections empower the court to facilitate just determination of matters before it, and to issue orders that are necessary for the end of justice to be met.
43. From the court record, the written Judgment is dated 19th May 2023. In the said Judgment, the Plaintiff/Applicant suit was dismissed and the Defendant/ Respondent Counter-claim was allowed. Legally, the Plaintiff/Applicant ought to have filed its Appeal by 19th June 2023.



44. The Plaintiff/Applicant averred that it did not proffer any appeal because in the virtual Judgment, the court had allowed its claim and there was no need to file an appeal for a successful claim. Further, that the written Judgment was only availed on 5th August 2023, and to their utter shock, the written judgment was contrary to the virtual Judgment.
45. It is evident that the appeal was not filed on time as provided by Section 79 G of the Civil Procedure Act, but as provided in the provisions, the Plaintiff/Applicant has right to apply for extension of time to file appeal out of time, and the court has discretion to enlarge time on sufficient grounds. However, this discretion must be exercised judiciously. See the case of Nicholas Kiptoo Arap Salat vs IEBC & 7 Others SCK Appl. No. 16 of 2014(2014) eKLR.
46. Leave to appeal out of time is an equitable remedy which is granted at the discretion of the court, but is not a right. There are important principles to consider in an application for extension of time being; the applicant has a duty to show good cause for the delay; the applicant must demonstrate a reasonable explanation for the delay; show that there will be no prejudice to the Respondent; and the application must be brought without undue delay. See the case of Paul Musili Wambua VS Attorney General & 2others (2015) eKLR.
47. In the case of Nicholas Kiptoo Salat vs IEBC& 7 OTHERS(Supra), the Supreme court set out the guidelines to be considered in an application for leave to enlarge time to file an appeal as follows;
- “The court ought to consider the following principles in exercising the discretion to extend time for filing an appeal:
- i. Extension of time was not a right of a party. It was an equitable remedy that was only available to a deserving party at the discretion of the court;
 - ii. A party who sought extension of time had the burden of laying a basis for it to the satisfaction of the court;
 - iii. Whether the court ought to exercise the discretion to extend time, was a consideration to be made on a case to case basis;
 - iv. Whether there was a reasonable reason for the delay, which ought to be explained to the satisfaction of the court;
 - v. Whether there would be any prejudice suffered by the respondents if the extension was granted;
 - vi. Whether the application had been brought without undue delay; and;
- Whether in certain cases, like election petitions, public interest ought to be a consideration for extending time.”
48. From the above holding of the SCK, it is clear that extension of time is not a right of a litigant against a court, but is a discretionary power of courts for which litigants have to lay basis where they have sought to invoke such discretion. See the case of Nuthu vs Karanja Civil Appeal No.263 of 2023(2024) KEHC 10181(KLR), where the court held;
- “The principles governing an ex-parte application in respect of leave to file a suit out of time were enunciated in the Supreme Court case of County Executive of Kisumu v County Government of Kisumu and 8 Others (2017) eKLR [Civil Application No. 3 of 2016] as



follows: - 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.”

49. In the case of *Thuita Mwangi vs Kenya Airways Ltd (2003) eKlr*, and *Mombasa County Government vs Kenya Ferry Services & Another (2019) eKlr*, the courts held that in such an application for leave for extension of time, the court should consider the factors of delay which include the period and reason for the delay, arguability of the appeal, prejudice to the Respondent, compliance with time limits and effects on demonstration of justice.
50. The Plaintiff/Applicant argued that when they received the Judgment virtually, it was in their favour, but the written Judgment was contrary to the virtual judgment. That they could not appeal against a Judgment which they were successful.
51. The court has gone through the record and has noted the judgment in issue was delivered on 19th May 2023. However, the court record shows the original file and judgement were received at Narok ELC on 29th July 2025, and the judgment was uploaded on the CTS on 5th August 2025.
52. The Applicant averred that from May 2023, they could not access the physical file and the written Judgment was not availed. Since the court records confirms that this file was one of the files pending before the JSC on the complaints of pending judgments before justice Mohammed Kullow, then it is evident that Plaintiff/Applicant did not have access to the written Judgment, and could not file an appeal. The delay is therefore reasonably explained.
53. With the above explanation, the court finds and holds that indeed sufficient reasons have been given to warrant extension of time to file appeal out of time. In the case of *Leo Sila Mutiso vs Rose Hellen Wangari Mwangi(Supra)* the court held as follows;
54. Being guided as above, the court finds and holds that the Plaintiff/Applicant is deserving of an order for extension of time to file the intended appeal out of time.
55. On the prayer for stay of execution of the judgment delivered on 19th May 2023, it is evident that in the said Judgment, the court did dismiss the Plaintiff case and allowed the Defendant Counter-Claim, wherein it declared that the suit land Cis Mara/Nkobon/56 belongs to the 62 members of the Plaintiff Phase 11 as listed in the Defendant’s documents and not to the Plaintiff; further, the Land Registrar Narok was directed to sub divide the said land into individual titles in favour of the 62 members.
56. The Plaintiff/Applicant averred that the initial Judgment was in its favour, and that due to the believe that the written judgment would be in tandem with the virtual judgment, the plaintiff’s members have been in possession of their respective portions of land, wherein they have developed and built their homes thereon.
57. Further, that the Defendant/Respondents are keen to execute the Judgment, and if no stay is granted, then there is a likelihood that the Defendants will evict the Plaintiff’s members from their portions on land. That the said eviction and expected demolition cannot be compensated by an award of damages.
58. On the prayer for stay of execution the guiding law is Order 42 Rule 6 (2) of the Civil Procedure Rules, which provides; -

“

- “(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.”.

59. The principles to be considered in an application for stay pending appeal have been ably elaborated in many court decisions. In the case of *Butt vs Rent Restrictions Tribunal*(1979) KLR the court held;-

- a. “The power of the court to grant or refuse an application for a stay of execution is discretionary; and the discretion should be exercised in such a way as not to prevent an appeal.
- b. Secondly, the general principle in granting or refusing a stay is, if there is no other overwhelming hindrance, a stay must be granted so that an appeal may not be rendered nugatory should the appeal court reverse the judge’s discretion.
- c. Thirdly, a judge should not refuse a stay if there are good grounds for granting it merely because, in his opinion, a better remedy may become available to the applicant at the end of the proceedings.
- d. Finally, the Court in exercising its discretion whether to grant or refuse an application for stay will consider the special circumstances and its unique requirements. The court in exercising its powers under Order XLI Rule 4(2) (b) of the Civil Procedure Rules, can order security upon application by either party or on its own motion. Failure to put security of costs as ordered will cause the order for stay of execution to lapse.”

60. Further, in the case of *James Wangalwa & Another vs Agnes Naliaka Cheseto* 2102 eklr, the court held;-

“No doubt, in law, the fact that the process of execution has been put in motion, or is likely to be put in motion, by itself, does not amount to substantial loss. Even when execution has been levied and completed, that is to say, the attached properties have been sold, as is the case here, does not in itself amount to substantial loss under Order 42 Rule 6 of the CPR. This is so because execution is a lawful process. The applicant must establish other factors which show that the execution will create a state of affairs that will irreparably affect or negate the very essential core of the applicant as the successful party in the appeal ... the issue of substantial loss is the cornerstone of both jurisdictions. Substantial loss is what has to be prevented by preserving the status quo because such loss would render the appeal nugatory.”

61. The court has considered the impugned judgment, the draft Memo of Appeal and this court finds that it raises triable issues and is arguable. Further, it is alleged that the Plaintiff’s members are in possession of their individual portions of land from the suit land, and if the said judgment is executed, then there is a likelihood of them being evicted from the suit land, thus suffering irreparable loss which cannot be compensated by an award of damages.

62. The impugned Judgment was uploaded in the Judiciary CTS on 5th August 2025, and thus that is the time the Plaintiff /Applicant got access to the written Judgement. This Application is dated 15th August 2025, and therefore, the same was filed on time and there is no unreasonable delay in filing the instant application.

63. Having considered the circumstances of this case, the instant Application, the cited provisions of law and the rival written submissions, the court finds that the Plaintiff/Applicant is deserving of orders of stay of execution of the judgement of the court delivered on 19th May 2023.



64. From the foregoing, the court finds and holds that the Plaintiff/Applicant's Notice of Motion Application dated 15th August 2025 is merited and the same is allowed entirely in terms of prayers No 3 and 4, with an order that each party to bear their own costs.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAROK THIS 29TH DAY OF JANUARY 2026.

L. GACHERU

JUDGE.

Delivered virtually in the presence of

Elijah Meyoki - Court Assistant

Mr. Naimondu holding brief for Ms Maritim for Plaintiff/Applicant

Mr. Ombati for Defendant/Respondent

