

**REPUBLIC OF KENYA**

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

**ELC MISCELLANEOUS CASE NO. E020 OF 2025**

**HANNAH WANGARI NJUGUNA.....**  
**APPLICANT**

**VERSUS**

**JOSEPH NGWARE, MICHAEL NJOROGE 7 FREDRICK KINUTHIA**  
**T/A JOFREMIC INVESTMENT.....**  
**RESPONDENT**

**RULING**

1. Vide a Notice of Motion Application dated 5<sup>th</sup> November 2025 brought under the provisions of Section 15 of the Landlord and tenants (Shops, Hotels and Catering Establishment) Act Section 79G and 95 of the Civil Procedure Act, Orders 50 Rule 6 and Order 42 Rule 6 of the Civil Procedure Rules and all enabling provisions of the law, the Applicant/Appellant herein seeks leave to file an appeal out of time against the ruling/order of the Nakuru Business Premises Rent Tribunal case No. E017 of 2624 (Joseph Ngware, Michael Njoroge Nganga & Fredrick Kinuthia t/a Jofremic Investments versus Hannah Wangari Njuguna) delivered on 20<sup>th</sup> March 2025.
2. The appellant further seeks orders of stay of execution of the said ruling and orders directing her to pay any utility bills in arrears within 60 days, as at the time of the ruling, failure to which the landlord shall be at liberty to distress for rent and electricity arrears. She sought that upon the grant of leave, the annexed draft memorandum of appeal be deemed duly filed.
3. The said application was supported by the grounds therein, as well as the supporting Affidavit of the applicant, sworn on 5<sup>th</sup> November 2025, wherein she deponed that she was prevented from filing an appeal against the above captioned Tribunal's ruling due to illness and hospitalization and therefore the delay of six months was not deliberate but was due to circumstances beyond her control. She deponed that the Respondents, through their appointed auctioneers, had issued a proclamation dated the 3<sup>rd</sup> of November 2025 against her business in a purported execution of the Tribunal orders.

4. She deponed that should the court not intervene by granting the stay of execution, she stood to suffer substantial loss, including the sale of her business assets, thereby rendering the appeal nugatory.
5. That her appeal raises serious arguable issues with a high likelihood of success, particularly on the improper surface of notice and shifting of the burden of proof. She further deponed that the application was brought without undue delay and in good faith solely to preserve the subject matter so that justice is not defeated by premature execution.
6. That she was ready to abide by any reasonable condition or directions that the court would impose for the grant of a stay. She thus sought that her application be allowed.
7. In response to the application, the Respondent, through their replying affidavit, sworn on 19<sup>th</sup> November 2025, deponed that the application was fatally defective, frivolous and vexatious and an abuse of the court process and ought to be dismissed in limine.
8. That despite the provisions of Section 15 of the Landlord and Tenants (Shops, Hotels and Catering Establishment) Act, requiring appeals to be filed within 30 days, the Applicant had filed the current application 7 (seven) months after the impugned ruling, which delay was inordinate, unreasonable, and grossly unexplained there being no medical chits annexed to the application.
9. That the medical notes annexed to the application clearly showed that she was treated and discharged, and that at no particular time was she incapacitated for the extended period of time, nor was she unable to attend to her personal affairs.
10. He deponed that the Applicant had not shown any diligence, promptness or interest in pursuing the intended appeal. That equity did not aid the indolent. The application was an afterthought, and the appeal was not arguable, as the Tribunal's decision had been well-reasoned and based on evidence presented.
11. The Respondent deponed that on the flip side, they stood to suffer prejudice should the court be persuaded to reopen the matter that was concluded eight months ago because the Applicant continued occupation of the suit premises even after the Tribunal's ruling, without paying any rent whatsoever, was unjustly enriching her and

deliberately violating the very same orders she now sought to challenge

12. That litigation should come to an end. That indeed, the Applicant had not met the legal requirements for extension of time as set out under Section 79 G of the Civil Procedure Act and Order 50 Rule 6 of the Civil Procedure Rules. That she had also not come to court with clean hands, for which the application should be dismissed.
13. The application was disposed of by way of a written submission to which the applicant, in her written submissions dated 2<sup>nd</sup> November 2025, argued that time should not be viewed in a vacuum but within the context of her circumstances. Citing the case of **Leo Sila Mutiso v. Rose Hellen Wangari Mwangi [1999] eKLR**, she reminded the court that extension of time is a discretionary power based on the length of delay, the reason for it, and the merits of the appeal. Relying on the decision in **Nicholas Kiptoo Arap Korir Salat v. IEBC [2014] eKLR**, she asserts that while the entire period must be explained, she had done so by showing that her illness prevented her from instructing counsel.
14. She contended that she acted immediately upon recovery, thus meeting the standard as was held in **Bi Mach Engineers Ltd v. James Kahoro Mwangi [2011] eKLR**.
15. The Applicant challenged the Respondent's claim that her medical records were inadequate. Citing the case of **John Kuria v. Kithaka M'Musee [2015] eKLR**, she argued that illness did not require medical precision, but only a credible explanation.
16. She submitted that she suffers from a chronic condition requiring monthly clinic visits, which was sufficient proof, as was held in **Tana & Athi Rivers Development Authority v. Jeremiah Kimigho Mwakio (sic)**, wherein courts were warned against imposing excessive standards of medical proof.
17. She asserted that she did not need to prove the appeal would succeed, only that it is not frivolous. She identified three weighty questions to be determined in the appeal, to wit:
  - i. Despite the Tribunal allegedly finding she wasn't properly served, it had still ruled against her.

- ii. There had been a violation of the provisions of Sections 107-109 of the Evidence Act wherein the burden of proof regarding rent payment was shifted to her.
  - iii. The Respondent had failed to produce rent statements or receipts to prove the alleged arrears.
18. She relied on the provisions of Order 42 Rule 6 of the Civil Procedure Rules to submit that she sought to stop the auctioneers to prevent the appeal from being rendered nugatory. That she would suffer substantial loss since the proclamation of her business assets posed a threat of irreparable harm.
19. She argued that while the Respondent's claim was purely monetary (and thus recoverable later), the loss of her business is irreversible and therefore the balance of inconvenience shifted in her favour. She expressed her readiness to abide by any security conditions set by the court to guarantee the interests of justice.
20. In conclusion, her submission was that because the delay was credibly explained by chronic illness and the appeal raises serious legal questions, the court should exercise its discretion in favour of substantive justice over technical finality.
21. The Respondent's submissions of 15<sup>th</sup> December 2025 in opposition to the Application characterised it as a delay tactic designed to frustrate the execution of a valid judgment. Their arguments are built on the principles of equity, the finality of litigation, and the failure of proof.
22. They argued that the Applicant had failed the test set out in Section 79G of the Civil Procedure Act and the landmark case of **Nicholas Kiptoo Korir arap Salat vs IEBC (2014) eKLR**.
23. They emphasized that there was an inordinate delay, for which the seven-month delay for a 30-day statutory window was grossly unexplained and unreasonable.
24. They highlighted a critical evidentiary gap, stating that the Applicant had provided a medical report dated March 2024, which predates the ruling. Therefore, there had been no proof of illness or hospitalisation between the ruling delivered in March 2025 and the application made in November 2025.

25. It was the Respondent's submission that the Applicant went to slumber and only rushed to court when she was served with a Proclamation Notice on 3<sup>rd</sup> November 2025, proving that the application is an afterthought rather than a result of recovery.
26. Invoking the maxim "*Equity aids the vigilant, not the indolent*," they argue that the Applicant is in contempt of the Tribunal's orders by failing to pay utility bills and rent while continuing to occupy the premises—thereby unjustly enriching herself.
27. That further, the Applicant had failed on all three limbs under Order 42 Rule 6 of the Civil Procedure Rules. They argue this is a meagre money decree. Citing **Kenya Shell Ltd v Benjamin Karuga Kabiru & Another (1986) KECA 94(KLR)**, they asserted that they were capable of refunding the money if the appeal succeeds, meaning therefore, that there existed no irreparable loss. Furthermore, the seven-month gap negated the requirement that a stay application must be brought without unreasonable delay, and lastly, that the Applicant had offered no tangible security for the performance of the decree, only a vague promise to abide by conditions.
28. They submitted that granting the stay would deprive them of the fruits of their judgment and force them to incur further legal costs for a matter concluded eight months ago. They contended the intended appeal was devoid of merit because the Tribunal's decision had simply ordered the tenant to fulfil basic duties of paying rent and utilities.

### **Determination.**

29. Having considered the application before the court herein, the opposition thereto, the submissions by both parties, the authorities cited, and the applicable law, consequently, the pending issues for determination are as follows;
- i. Whether there should be an extension to file an Appeal.
  - ii. Whether there should be orders of stay of execution pending appeal.
30. The provisions of Section 79G of the Civil Procedure Act give an appellate court discretion to extend time for filing an appeal from the

subordinate Court to the High Court. (Read Environment and Land Court) as follows;

*“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. “*

31. The law concerning stay of execution pending Appeal is found in Order 42 Rule 6 of the Civil Procedure Rules, which stipulates as follows:

*“1. “No appeal or second appeal shall operate as a stay of execution or proceedings under a decree or order appealed from except in so far as the court appealed from may order but the court appealed from may for sufficient cause order stay of execution of such decree or order and whether the application for such stay shall have been granted or refused by the court appealed from the court to which such appeal is preferred shall be at liberty on application being made to consider such application and to make such order thereon as may to it seem just and any person aggrieved by an order of stay made by the court from whose decision the Appeal is preferred may apply to the appellate court to have such orders set aside. Prima facie case in a Civil Application includes but is not confined to a ‘genuine and arguable case’. It is a case which, on the material presented to the Court, a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter.*

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.”

32. The Applicant brings her application seeking leave to file an appeal out of time against the ruling/order of the Nakuru Business Premises Rent Tribunal case No. E017 of 2024 (Joseph Ngware, Michael Njoroge Nganga & Fredrick Kinuthia t/a Jofremic Investments versus Hannah Wangari Njuguna) delivered on 20<sup>th</sup> March 2025, wherein she had been directed to pay any utility bills in arrears within 60 days (of the ruling), failure to which the landlord would be at liberty to distress for rent and electricity arrears.

33. In the case of **Nicholas Kiptoo Arap Korir Salat vs. The Independent Electoral and Boundaries Commission & 7 Others [2014] eKLR**, the Supreme Court of Kenya held that:

*“... 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:*

- i. *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;*
- ii. *a party who seeks extension of time has the burden of laying a basis, to the satisfaction of the Court;*

- iii. *whether the Court should exercise the discretion to extend time, is a consideration to be made on a case-to-case basis;*
- iv. *where there is a reasonable [cause] for the delay, [the same should be expressed] to the satisfaction of the Court;*
- v. *whether there will be any prejudice suffered by the Respondent, if extension is granted;*
- vi. *whether the application has been brought without undue delay; and*
- vii. *whether in certain cases, like election petitions, public interest should be a consideration for extending time”*

34. Has the Applicant fulfilled the above requirements to be granted leave to file her appeal out of time? The Applicant argues that, pursuant to the decision rendered by the Tribunal, she fell ill and was hospitalized. That she therefore could not bring her Appeal on time. She argued that the six-month delay was not deliberate but was due to circumstances beyond her control. That the Respondent’s auctioneers have already issued a proclamation dated the 3<sup>rd</sup> of November 2025 against her business in a purported execution of the tribunal orders. She sought that the annexed Draft Memorandum of Appeal be deemed as duly filed.

35. I have considered the Applicant’s Application, plea for extension of time, which was supported by the grounds embodied therein, the Supporting Affidavit and the Draft Memorandum of Appeal.

36. Section 79G of the Civil Procedure Act and Order 50 Rule 6 is judicial, and not absolute. Indeed, the Court of Appeal in **Leo Sila Mutiso v. Rose Hellen Wangari Mwangi [1999] eKLR**, 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 stated 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."*

37. The 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. I have considered that whereas the ruling of the Tribunal was delivered on 20<sup>th</sup> March 2025, the Application herein is dated the 5<sup>th</sup> November 2025 the delay being approximately seven months. While the law does not set a stopwatch on what constitutes an inordinate delay, the explanation provided must be reasonable and credible, as was held in the case of **Nicholas Kiptoo** (supra)
38. The Applicant's position was that she suffers from a chronic illness, and monthly clinic visits prevented her from instructing counsel. I have considered the medical chit herein annexed to the Application, which, as the Respondents rightly point out, is dated 4<sup>th</sup> March 2024, a full year **before** the ruling was even delivered. The Applicant failed to provide any treatment chits or admission records covering the critical period between March 2025 and November 2025. The Applicant's failure to provide medical evidence contemporary to the period of delay is fatal because the inordinate delay has not been explained to the satisfaction of the Court. Equity aids the vigilant, not those who slumber until an auctioneer's proclamation wakes them. The Application to file the Appeal out of time is herein denied.
39. On the second issue for determination, under Order 42 Rule 6 of the Civil Procedure Rules, as hereinabove cited, provide that a stay of execution can only be granted if substantial loss may result.
40. From the Applicant's application, it is evident that she fears that her business assets may be sold by the Respondents' auctioneers, pursuant to the orders of the Tribunal. The Respondents argue this is a money decree for rent and utilities for which they would be able to refund the money were the Appeal to succeed.
41. In the classicus case of **Kenya Shell Limited vs. Benjamin Karuga Kabiru & Another [1986] KLR**, the Court of Appeal held as follows:

*“It is not sufficient by merely stating that the sum of Shs 20,380.00 is a lot of money and the applicant would suffer loss if the money is paid. What sort of loss would this be? In an application of this nature, the applicant should show the damages it would suffer if the order for stay is not granted. By granting a stay would mean that status quo should remain as it were before judgment. What assurance can there be of appeal succeeding? On the other hand, granting the stay would be denying a successful litigant of the fruits of his judgment. The applicant has not given to court sufficient materials to enable it to exercise its discretion in granting the order of stay.”*

42. This is the locus classicus case on the matter where the Court of Appeal established the standard for what constitutes "substantial loss" in money decrees. In an application for stay of a money decree, the Applicant must show that the Respondent would not be in a position to refund the decretal sum if the appeal were to succeed. Generally, the courts are reluctant to stay a decree that involves only the payment of money. The rationale is that money is a fungible commodity—it can be replaced. If a party pays the money now and wins the appeal later, they can be refunded. Therefore, the mere payment of money does not usually constitute substantial loss. If a decree is purely monetary, a stay is refused unless it is shown that the Respondent would be unable to refund the money if the appeal succeeds.

43. Furthermore, the Applicant's unclean hands, specifically the allegation of continued occupation without rent payment, weigh heavily against the grant of an equitable remedy. To this effect, the second limb of the application is also denied.

44. In the end, I find no merit in the Notice of Motion dated 5<sup>th</sup> November 2025, which is herein dismissed with costs.

**Dated and delivered at Naivasha via Teams Microsoft this 12<sup>th</sup> day of February 2026.**



**M.C. OUNDO**

**ENVIRONMENT & LAND COURT- JUDGE.**