

REPUBLIC OF KENYA

**IN THE ENVIRONMENT AND LAND COURT AT NAIVASHA
ELCL MISCELLANEOUS CASE NO. E016 OF 2025**

VERONICA WAHU NJIRIRI.....1ST

APPLICANT

GITHINJI NJIRIRI.....2ND

APPLICANT

**(Suing in their capacity as the Administrators of the Estate of
Wanjeri Njiriri-deceased)**

VERSUS

SIMON KIRURI NJOROGE.....

RESPONDENT

RULING

1. Coming up for determination is a Notice of Motion Application dated 3rd October, 2025 brought under the provisions of Sections 63, 79G, 3A & 1B of the Civil Procedure Rules Act, Order 51 of Civil Procedure Rules, High Court Procedure Application (sic) and procedure rules and all enabling provisions of the law wherein the Applicants herein seeks an order for a stay of execution of the judgment of Naivasha Chief Magistrate court rendered on 31st July 2025 in Naivasha MCELC E021 of 2020 Veronica Njiriri and Githinji Njiriri vs. Simon Kiruri Njoroge.
2. The Applicants further seek leave to enlarge time to file an appeal against the said judgment and or for such orders as to meet the interest of justice. The costs of the application are to be borne by the Respondent.
3. The said Application was premised on the ground on its face and the Supporting Affidavits of equal dates sworn by Veronica Wahu Njiriri (1st Defendant/Applicant), acting for herself and a co-applicant and their advocate Dominic Njuguna Mbigi, who purported to be an advocate of the Supreme Court of Kenya(sic)
4. They deponed that after the hearing of the suit in the trial court was concluded on 29th October 2024, the trial court had directed parties to file

submissions on a pending application for joinder so as to render a ruling and a judgment thereafter. That subsequently the matter was mentioned on the 3rd December 2024, 18th February 2025, and 1st April 2025 wherein it had been scheduled for delivery of the Ruling and judgment on 25th May 2025. However, on the said date, the ruling and the judgment were not ready. Parties had been informed that the same would be delivered on Notice.

5. That they then dutifully registry checked on the status on a month-to-month basis, both at the registry and the CTS. It was not until 1st October 2025 that they noted that the judgment had been delivered without notice and backdated to 31st July 2025.
6. That upon downloading the judgment, they were dissatisfied with the same and sought to exercise their unquestioned right of appeal, but the statutory period to file an appeal had lapsed, and they could only do so if granted leave of court to appeal out of time. They believe that they have a substantial appeal, which raises important legal issues that warrant hearing by the High Court, (sic).
7. In response to the Applicant's Application, the Respondent, through his Grounds of Opposition dated 20th October 2025, opposed the Application on the grounds that;
 - i. That the Applicants approached the Honourable court with unclean hands by seeking relief without complying with the terms of the judgment dated 31st July 2025. That they were in contempt, and that relevant proceedings would be invoked to hold them culpable.
 - ii. That they had not met the conditions for stay as set out under the provisions of Order 42 Rule 6 of the Civil Procedure Rules.
 - iii. The application had been filed two (2) months after delivery of judgment, which was well outside the

statutory timelines, where no sufficient cause had been demonstrated to warrant enlargement of time.

- iv. That the court had delivered the judgment through the official CTS platform, which is recognised as a proper mode of delivery and is in the public domain, hence parties and their respective advocates were deemed to have notice via SMS once the judgment was uploaded. The Applicants could not thus feign ignorance.
 - v. That equity does not aid the indolent, and they could not seek discretionary relief while in contempt of court orders.
 - vi. That granting a stay of proceedings and execution would delay the enjoyment of the fruit of the judgment and incur the Respondent doubt-jeopardy as he continues to suffer prejudice while the Applicants benefit from their own default.
 - vii. That the instant Application is frivolous, vexatious and an abuse of the court process and serves no legitimate purpose other than to derail execution and engage the court in an academic exercise.
8. He thus sought that the Applicant's Application be dismissed with costs assessed at Kshs. 50,000/=.
9. The instant Application was disposed of by way of written submissions.

Applicants' Submissions.

10. The Applicants vide their Submissions dated 11th December 2025, first summarized the factual background of the matter, and then proceeded to submit that the Respondent had not sworn any affidavit to indicate whether any Notice had been received or when the judgment had been uploaded. The absence of the notice, therefore, remains uncontroverted. That at paragraph 8 of the judgement, which did not indicate the

presence of any party or court clerk at the time of its delivery, was as follows:

“I apologize to the parties for the delay in delivery of this judgment. This was due to the fact that there is a file bearing similar number like this one but with different parties. It is only after the applicant made inquiries that the court assistant brought to my attention the anomaly which I moved fast to correct. It was not by design”

11. That from the foregoing, it was clear that the Applicant was concerned about the case and the delayed judgment whereby he had made inquiries. The court, however, did not address the absence of notice. That they were mere victims of circumstances where the provisions of Section 79G, 1B and 3A of the Civil Procedure Act had been enacted to ensure that a party does not lose their legal right due to an inadvertence or an error that could be rectified.
12. They placed reliance on the case of **James Ndungu Muchugi v Joyce Nduta Muchugi & 9 Others [2012] KECA 14 (KLR)**, where the court had cited the case of **Mutiso Vs. Mwangi (1999) EA 23**, in reiterating that a court had a wide discretion in deciding whether or not to grant leave to extend time while considering the reason for the delay. Accordingly, based on the facts adduced in their application, together with the aforementioned principles, the Application was well merited, and there would be no prejudice occasioned to the Respondent if the Applicants were granted leave to exercise their constitutional right to appeal
13. On the orders of stay of execution, they submitted that if the decree was executed and the land transferred while the appeal was pending, the same would be reduced to a mere academic exercise. Reliance was placed on the decision in University Council of **Technical University of Mombasa v Kenya Union of Domestic, Hotels, Education Institution and Hospital Workers [2024] KECA 555 (KLR)**.

14. They submitted that rendering the Appeal nugatory would in itself constitute substantial loss, especially in the situation where a parcel of land belonging to the estate of the deceased would be in danger of alienation. That, subsequently, they had demonstrated that they were entitled to the relief sought and beseeched the court to exercise its lawful discretion and allow the application as prayed.

Respondent's Submission

15. The Respondent's submissions dated 3rd December, 2025 was based on the following issues for determination:

- i. Whether the Applicants have satisfied the legal threshold for stay under Order 42 Rule 6 CPR, 2010.
- ii. Whether the application filed two months after judgment is time-barred and whether sufficient cause for enlargement of time has been shown.
- iii. Whether the Applicants are entitled to discretionary relief while in contempt of court.
- iv. Whether the judgment was delivered without notice to the Applicants.
- v. Whether the Defendants have satisfied the legal threshold for setting aside a regular judgment. (sic)
- vi. Whether the application is brought in good faith
- vii. Whether the application amounts to abuse of the court process.

16. On the first issue for determination, the Respondent placed reliance on the provisions of Order 42 of the Civil Procedure Rules to submit that the Applicants had failed on all three limbs. While relying on the decision in **Kenya Shell Limited v Benjamin Karuga Kibiru & another [1986] KECA 94 (KLR)**, he submitted that no substantial loss had been demonstrated by the Applicants. That they had merely stated that they

would “suffer prejudice” without proof, which mere assertions do not meet the evidentiary threshold.

17. Secondly, there had been an unreasonable delay of two months after judgment, more so when the mode of delivery was the CTS platform, which automatically notifies parties.
18. Lastly, no security had been offered or even proposed, hence the Applicants were engaging the court on arithmetical trial and error. He submitted that although the failure to comply with any one limb defeats the application. In the instant case, the Applicants had failed all three limbs.
19. On the second issue for determination as to whether the application is time-barred and whether sufficient cause had been shown, he submitted that whereas the Applicants were seeking enlargement of time under the provisions of Section 79G of the Civil Procedure Act, they had taken two months to act. Furthermore, whilst they had blamed their delay on the alleged non-notification, the judgment had been uploaded to CTS, a recognized mode of delivery that automatically sends SMS alerts. That in any event, no correspondence, affidavit evidence, or reasonable explanation was annexed to justify the delay. Reliance was placed on the Court of Appeal’s decision in the case of **Bi-Mach Engineers v James Kahoro Mwangi [2011] eKLR**. The Applicants were not prevented from filing; they were simply indolent, and equity does not aid such litigants.
20. The Respondent then submitted that the Applicants could seek discretionary relief while in contempt of the court order in its judgment of 31st July 2025 until they purged the same. He placed reliance on the decided cases of **Hadkinson v Hadkinson [1952] All ER 567** and **Econet Wireless Kenya Ltd v Minister for Information [2005] eKLR**. Accordingly, the Applicants should not be granted an audience.
21. On the fourth issue for determination as to whether the judgment had been delivered without notice to the Applicants, he submitted that CTS Notifications had been duly issued because:

- i. Judgments and rulings in the CTS system are posted and accessible to all parties who have registered the matter.
 - ii. The Applicants' advocates are fully registered on CTS and have been actively participating in the matter through CTS filings and responses.
 - iii. The CTS system automatically generates notifications upon uploading of a judgment, and the Applicants could not claim ignorance of a platform they have continually used.
22. He submitted that Courts have consistently held that notice of delivery of judgment through the CTS constitutes sufficient service, and that a party could not benefit from their own negligence or failure to routinely check the system. That even where the court reserves judgment, advocates had a duty under the overriding objective and the provisions of Order 17 Rule 2 of the Civil Procedure Rules, to follow up on the progress of their matter. He thus submitted that the Defendants' failure to check the CTS portal was not a legal ground for reopening an entire judgment.
23. That the application was not brought in good faith, the judgment had been properly delivered and uploaded, where the Defendants only moved the court after execution steps had commenced, which shows that the instant application was meant to delay the rightful enjoyment of the Respondents' judgment, yet litigation must come to an end.
24. Lastly, the Respondent submitted that the application was an abuse of the court process, was riddled with inconsistencies, filed after an unreasonable delay, and supported by mere allegations with an intention to delay the Respondent's enjoyment of the fruits of judgment, derail execution and clog the court system with an academic exercise. Reliance was placed on the Supreme Court's decision in the case of **Nicholas Kiptoo Arap Korir Salat v IEBC & 7 others [2014] eKLR**. He sought the court's refusal to aid parties who deliberately delay justice, seek

equitable relief without clean hands, and use procedural devices to defeat substantive justice.

25. That allowing the instant application would severely prejudice him since he had waited since the year 2007 (as had been noted in the judgment) for the completion of the land transaction, had obtained valid orders of specific performance and complied with all obligations, including payment of the purchase price. That subsequently, the Applicants should not be permitted to weaponize technicalities to evade justice. He thus urged the Honourable Court to dismiss the Application dated 3rd October 2025 in its entirety and award him costs, assessed at Kshs. 50,000/= as sought in the Grounds of Opposition.

Determination.

26. Having considered the application before the court herein, the opposition thereto, the submissions by both parties, the authorities cited, and the applicable law, the Applicants bring their application seeking an order from the court to stay the execution of a judgment delivered by the trial court in Naivasha Chief Magistrate's court, rendered on 31st July 2025 in Naivasha MCELC E021 of 2020 Veronica Njiriri and Githinji Njiriri vs. Simon Kiruri Njoroge. The Applicants further seek an extension of time to file their intended Appeal, having been aggrieved by the said judgment.

27. Consequently, the pending issues for determination are whether this court should grant the Applicants the orders sought for being;

- i. Enlargement of time to enable them file their Appeal after the expiry of the statutory period.
- ii. Stay of execution of the judgment of Naivasha Chief Magistrate court rendered on 31st July 2025 in Naivasha MCELC E021 of 2020 Veronica Njiriri and Githinji Njiriri vs. Simon Kiruri Njoroge.

28. On the first issue concerning the order of Leave to appeal out of time,

Section 79G of the Civil Procedure Act, which gives an appellate court discretion to extend time for filing an appeal from the subordinate Court to the High Court. (Read Environment and Land Court) stipulates 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. “

29. 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 court 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”*

30. Have the Applicants fulfilled the above requirements so as to be granted leave to file their appeal out of time? The gist of the matter is that the delay in filing their Appeal on time was caused by a registry file mix-up, in which no notice was issued on the date of judgment delivery. That the suit land was part of a deceased’s estate, which was being illegally intermeddled with. That being aggrieved by the Judgement, they sought to file an appeal, which was weighty and would address errors in the application of succession law. They risk suffering substantial loss if the land is alienated.

31. The Respondent’s argument in response was that the Applicants were indolent, that the notice of delivery of the Judgement and the Judgement itself had been available via the CTS platform. That he had lawfully purchased the land from a beneficiary and was therefore entitled to it. That the Application was frivolous and an attempt to delay the "fruits of judgment." That he would be prejudiced due to the delayed enjoyment of the property.

32. Anyara Emukule J in **Gerald M’limbine v Joseph Kangangi [2009]**

eKLR interpreted the provision to Section 79G of the Civil Procedure Act as follows;

“My understanding of the proviso to Section 79G is that an Applicant seeking an Appeal to be admitted out of time must in effect file such an Appeal and at the same time seek the Court’s leave to have such an Appeal admitted out of the statutory period of time. The provision does not mean that an intending appellant first seeks the Court’s permission to admit a nonexistent Appeal out of the statutory period. To do so would actually be an abuse of the Court’s process which under Section 79B”

33. It is clear that for the provisions of Section 79G of the Civil Procedure Act to apply, an Applicant seeking an appeal to be admitted out of time must, in effect, file such an appeal, and at the same time seek the court’s leave to have the appeal admitted out of the statutory period of time. The proviso does not mean that an intending appellant first seeks the court’s permission to admit a non-existent appeal out of the statutory period of time.
34. I have looked at the Applicants’ Application for extension of time, which was supported by the grounds embodied in the Application as well as the Supporting Affidavits. I have noted that the said application spoke of an intended Appeal; however, there were no annexures of the Memorandum of Appeal to the supporting affidavits.
35. The Applicant ought to have annexed the draft intended Memorandum of appeal for the Court’s perusal when making his application for extension of time. The extension of time being a creature of equity, one can only enjoy it if he acts equitably, for he who seeks equity must do equity; it is not a right of a litigant against a court, but a discretionary power of the courts, which litigants have to lay a basis where they seek courts to grant it. There being no competent Memorandum of Appeal in

place, I find this limb of the Application has no merit as it seeks to file a non-existent appeal out of time.

36. On the second issue for determination as to whether the Court should stay execution of the judgment of Naivasha Chief Magistrate court rendered on 31st July 2025 in Naivasha MCELC E021 of 2020 Veronica Njiriri and Githinji Njiriri vs. Simon Kiruri Njoroge, 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.”

37. Subsequently, have the Applicants satisfactorily discharged the conditions warranting the grant of stay of execution of the decree pending Appeal.

38. What amounts to a substantial loss was clearly explained by the Court of Appeal in **Kenya Shell Limited v Benjamin Karuga Kibiru & another [1986] KECA 94 (KLR)** held as follows: -

“ If there is no evidence of substantial loss to the applicant, it would be a rare case when an appeal would be rendered nugatory by some other event. Substantial loss in its various forms, is the corner stone of both jurisdictions for granting a stay. That is what has to be prevented. Therefore, without this evidence it is difficult to see why the respondents should be kept out of their money.”

39. On the first condition of proving that a substantial loss may result unless a stay order is made, it was incumbent upon the Applicants to demonstrate the kind of substantial loss they would suffer were the stay order was not granted. There having been no draft Memorandum of Appeal annexed to the Application, I am unable to find whether they have an arguable appeal, and therefore I am not in a position to determine whether they will suffer substantial loss if the decree is executed against them.

40. I have, however, gained sight of the impugned judgment annexed as VN3, and from the little I can gather, it is that the Respondent herein, upon purchasing the suit land vide an agreement of 15th January 2007, took possession of the land and has been in occupation since then. Therefore, by not granting the stay of execution, I find that the Applicants

will not suffer any prejudice, and the Appeal will not be rendered nugatory.

41. As to whether the instant Application has been brought without undue delay, I accept the Applicants' explanation that, there having been no notice issued on the date of the delivery of the judgement, as soon as they received the same, they had filed the present application, which I find was filed without undue delay.
42. On the last condition as to provision of security, Order 42 Rule 6 (2)(b) of the Civil Procedure Rules stipulates in mandatory terms that the third condition that a party needs to fulfil so as to be granted the stay order pending Appeal is that (s)he or they in this case, must furnish security to guarantee the due performance of such decree or order as may ultimately be binding on them. It is not to punish the judgment debtor. The Applicants herein have not pledged their readiness to furnish the court with such security for the due performance of the Decree that may ultimately be binding upon them.
43. I thus find no merit in the Applicant's Application dated the 3rd October 2025 and proceed to dismiss it with costs.

Dated and delivered at Naivasha via Teams Microsoft this 19th day of February 2026.



M.C. OUNDO

ENVIRONMENT & LAND COURT- JUDGE