

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ELC LC MISC. NO E79 OF 2025

YAHYA YUSSUF OSMAN APPLICANT

VERSUS

MOHINEEN ALIBHAI GILANI..... RESPONDENT

RULING

1. This ruling is in respect of the Applicant’s Notice of Motion dated 26th November, 2025 seeking the following orders:
 - a) *Spent.*
 - b) *That pending the hearing of this application inter-partes, there be a stay of execution in Nakuru BPRT No. 152 of 2024.*
 - c) *That pending the hearing and determination of the intended appeal, there be a stay of execution in Nakuru BPRT No. 1521 of 2024.*
 - d) *That this honourbale court be pleased to grant the applicant leave to appeal out of time.*
 - e) *That the costs of this application be in cause.*

2. The Application was supported by the annexed affidavit of the Applicant, Yahya Yusuf Osman sworn on 26th November 2025, where he deponed that the Ruling in **NAKURU BPRT NO. E. 152 OF 2024**, was delivered on 25th September, 2025 where the court ordered him to clear rent arrears and vacate the premises by 31st October 2025.

3. He also averred that his advocate on record did not inform him of what transpired in court during the ruling, which was not his fault. He stated that he intends to file an appeal, which has high chances of success and urged the court to grant him leave to file the appeal out of time.
4. The Respondent Mohideen Alibhai Gilani, filed a replying affidavit, sworn on 13th January 2026, and deponed that the Applicant has misrepresented facts as, when the Respondent filed a Reference **NAKURU BPRT NO. E. 152 OF 2024, MOHIDEEN A. GILANI V YAHYA YUSUF OSMAN** the Applicant filed a response through the firm of **Rodi Orege & Co Advocates** vide a replying affidavit.
5. That the Applicant filed another Reference against the Respondent, **NAKURU BPRT NO. E. 071 OF 2025, YAHYA YUSUF OSMAN V MOHIDEEN A. GILANI**, which were consolidated and the parties, filed submissions, which were the subject of the ruling. The Respondent further deponed that the said Firm of **Rodi, Orege & Co. Advocates** represented the Applicant, filed submissions and took a date for ruling by consent.
6. It was the Respondent's disposition that vide a letter dated 1st October 2025, his Advocate wrote to the Applicant's Advocates asking him to comply with the orders in the ruling and attached a copy of the ruling. He further stated that immediately after the Applicant got the ruling, he changed his Advocates to the firm of **Speline Ondande & Co. Advocates** and filed an application dated 3rd October 2025, under

certificate of urgency at the Tribunal to be allowed to pay the rent arrears by instalments.

7. According to the Respondent, the Applicant was granted an order of stay of execution and the application was to be heard on 30th October 2025. That between 25th September 2025, and 30th October 2025, the Applicant gave the Respondent three cheques of Kshs. 260,244 each making a total of Kshs 780,732/= which were banked and cleared.
8. The Respondent stated that the court issued orders on 13th November 2025, allowing the Applicant 7 days to give vacant possession, which subsequently reviewed the orders in the ruling dated 25th September 2025.
9. It was the Respondent's case that the Applicant did not comply with the orders of the court, necessitating him to activate eviction process through a licensed Auctioneer, whereby the Applicant changed Advocates to Naomi Murithi & Co Advocates in an effort to prolong his stay on the premises.
10. The Respondent urged the court to dismiss the application with costs as it lacks merit.

APPLICANT'S SUBMISSIONS

11. Counsel for the Applicant filed submissions dated 15th January 2026 and reiterated the contents of the affidavit and urged the court to allow the reliefs sought in the application as prayed.

RESPONDENT'S SUBMISSIONS

12. Counsel for the Respondent filed submissions dated 13th January 2026 and identified two issues for determination as follows:
 - a) Whether the Applicant should be granted the reliefs sought*
 - b) Who should bear costs?*

13. Counsel gave a brief background to the case which was captured in the Respondent's replying affidavit and relied on the case of **NICHOLAS KIPTOO ARAP KORIR SALAT Vs. INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION & 7 OTHERS [2014] eKLR**, where the Supreme Court summarized guidelines on the determination of an application for extension of time to file an appeal out of time.

14. It was counsel's submission that the court must take into consideration, the period of delay, the reason for such delay and the degree of prejudice likely to be occasioned to the respondent.

15. Counsel submitted that the reason the Applicant has given is that he did not know about the ruling but, the Applicant filed an application dated 3rd October 2025 which is 8 days after the delivery of the ruling to be allowed to clear the arrears by instalments. Counsel further told the court that the reasons advanced for the delay are falsehoods hence the Applicant's application should not be allowed.

16. Counsel relied on the case of Attorney **General V Law Society of Kenya & another [2013] KECA 372(KLR)**, which dealt with a similar issue where it was alleged that an advocate had not attended court.

ANALYSIS AND DETERMINATION

17. The issue for determination is whether the Applicant has met the threshold for the grant of leave to file an appeal out of time.
18. In the case of **Nicholas Kiptoo Arap Korir Salat vs Independent Electoral and Boundaries Commission & 7 others (2013) eKLR** the Supreme Court laid down the guidelines for the determination of applications for extension of time to file an appeal as follows:

“(1) 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.

(2) A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the court.

(3) Whether the Court should exercise the discretion to extend time, is a consideration to be made on a case to case basis.

(4) Whether there is reasonable reason for the delay. The delay should be explained to the satisfaction of the court.

(5) Whether there will be any prejudice suffered by the respondent of the extension is granted.

(6) Whether the application has been brought without undue delay; and

(7) Whether uncertain cases, like election petition, public interests should be a consideration for extending time.”

19. The decision whether to extend time for filing an appeal out of time is discretionary and must be considered on a case-to-case basis. The application must be filed without undue delay and the same should not cause the Respondent to suffer any prejudice.
20. The Applicant has not sufficiently explained, the reason for the delay in filing the Appeal. The reason given has been debunked by the Respondent’s explanation in the replying affidavit together with annexures which show that the Applicant has not disclosed that he was fully represented in the proceedings at the Tribunal. The reason given that he was not aware of the ruling is not tenable, as he engaged the services of a different lawyer, Speline Ondande & Co Advocates after abandoning the earlier Advocates Rodi Orege & Co Advocates to file an application of stay of execution in the Tribunal and entered into a consent where he paid Kshs.780, 732/= as rent arrears after requesting to be allowed to pay by instalments.
21. It is further on record that the Applicant was granted 7 days to vacate the premises, and when he did not comply with the orders, he secured the services of yet another Advocate, **Naomi Murithi & Co Advocates** who has filed the current application for extension of time to file an appeal out of time.

22. The Applicant wants to use the court to stall the process of execution, which he has been aware of all this time, and does not want to comply with the promises he himself made. Why did he not appeal at the time he became aware of the ruling, if he was dissatisfied with the outcome? Why did he go around looking for an Advocate to file applications instead of filing an appeal? The Applicant is not being honest with himself.
23. In the case of **County Executive of Kisumu vs County Government of Kisumu & others (2017) eKLR**, the Supreme Court held that:
“Each case has to be determined on its own merit and all relevant circumstances considered. It is worth reiterating that in considering whether or not to extend time the whole period of delay should be stated and explained to the satisfaction of the court.”
24. The Applicant did not bother to explain the delay in filing the appeal as he was still using other avenues to either comply with the order or circumvent it. An application for extension of time to file an appeal put of time is discretionary. The Applicant cannot benefit from the discretion of the court because there was material non-disclosure.
25. In the South African Labour Appeal Court in the case of **National Union of Mineworkers v Council for Mineral Technology [1998] ZALAC 22** where it was held that:

“The approach is that the Court has a discretion, to be exercised judicially upon a consideration of all the facts, and in essence it is a matter of fairness to both sides. Among the facts usually relevant are the degree of lateness, the explanation therefore, the prospects of success and the importance of the case. These facts are interrelated: they are not individually decisive. What is needed is an objective conspectus of all the facts. A slight delay and a good explanation may help to compensate for prospects of success which are not strong. The importance of the issue and strong prospects of success may tend to compensate for a long delay. There is a further principle which is applied and that is that without a reasonable and acceptable explanation for the delay, the prospects of success are immaterial, and without prospects of success, no matter how good the explanation for the delay, an application for condonation should be refused.”

26. Having found that the Applicant is not entitled to an order of extension of time to file an appeal out of time, it follows that granting an order of stay of execution would be superfluous.
27. I find that the Applicant has not met the threshold for the grant of leave to file an appeal out of time and therefore the application is dismissed with costs to the Respondent.

**DATED, SIGNED AND DELIVERED AT NAKURU THIS 17TH
DAY OF FEBRUARY 2026.**

**M. A. ODENY
JUDGE**