

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT

KISUMU

LAND CASE NO.E007 OF 2023

ABSOLOM PETER O.

AYANY.....PLAINTIFF

-VERSUS-

AFRICAN BANKING CORPORATION LTD.....1ST

DEFENDANT

LANDSCAN ASSOCIATES CO. LTD.....2ND

DEFENDANT

THE ATTORNEY GENERAL (on behalf of the Kisumu

County Registrar and Kisumu County surveyor, Ministry

of Lands, Housing and Urban Development

3RD DEFENDANT

R U L I N G

The application before court for determination is the Notice of Motion dated 29th September, 2025 expressed to be brought pursuant to the provisions of section 1A, 1B and 3A of the Civil Procedure Act Cap 21 Laws of Kenya, section 7 of the Appellate Jurisdiction Act, Order 22 Rule 22 and 42 Rule 6 of the Civil Procedure Rules 2010, and Articles 50 and 159(2)(c) of the Constitution of Kenya 2010.

Prayers 1 to 4 of the application are spent. Prayer 5 of the application seeks an order that the Honourable Court be pleased to grant leave to the Applicant to lodge a Notice of Appeal out of time to appeal against the judgment dated 8th May, 2025.

Prayer 6 seeks an order that, pending the hearing of the intended appeal, an order be issued to preserve the substratum of the appeal that the honourable court be pleased to extend the stay of execution of its judgement dated 8th May, 2025, in the proceedings and all its consequential orders.

And prayer 7 seeks an order that the costs occasioned by the application be provided for.

The grounds upon which the application was brought were that the applicant contests the payment of Kshs. 1,000,000/- awarded to the Plaintiff as damages for trespass, that the Plaintiff had already commenced the process of execution, and that the Plaintiff was claiming for interest, which interest had not been awarded in the judgment. That the Applicant's intended appeal is arguable. That the statutory timelines for filing notice of appeal had lapsed.

That no prejudice shall be occasioned to the Respondent if the application is allowed. The application is supported by the averments in the Supporting Affidavit sworn by one Louis Omukhulu on 29th September, 2025.

The application was opposed vide the grounds of opposition dated 8th October, 2025, and the Replying Affidavit sworn by the plaintiff on 8th October, 2025.

The application was heard by way of written submissions. It was submitted on behalf of the Applicant that the delay in filing the Notice of Appeal was caused by the Applicant's former Advocates, who neither notified it of the delivery of the judgment nor filed the Notice of Appeal.

The Applicant invoked the provision of article 159(2)(d) and the inherent jurisdiction of the court under the overriding principles to ensure the ends of justice are met by granting the Applicant a chance to be heard on appeal.

Counsel submitted that the prayer for it to file a Notice of Appeal out of time is merited.

On behalf of the Respondent, it was submitted that the law under which the application is brought, namely, Section 7 of the Appellate Jurisdiction Act, applies only to the Court of Appeal and not to this court.

That the application was brought after 5 months delay.

I have read section 7 of the Appellate Jurisdiction Act. It provides as follows:

“The High Court may extend the time for giving notice of intention to appeal from a judgement of High Court or making an application for leave to appeal or for a certificate that the case is filed for appeal notwithstanding that the time for giving such notice or making such appeal may have already expired. Provided that in the case of a sentence of death, no extension of time shall be granted after the issue of warrant for execution of that sentence.”

Pursuant to this provision, this court has discretion to grant an extension of time for filing the Notice of Appeal.

The Applicant has, however, not satisfied the grounds for the grant of the orders sought. The Applicant was represented in the matter. Costs were taxed and paid by the applicant. The applicant cannot, therefore, claim not to have been aware of the judgment. The prayer for extension of time is declined.

Similarly, the prayer for stay of execution of the judgment, which is anchored on the existence of an appeal, cannot succeed in the absence of such an appeal.

I find that the application lacks merit and hereby dismiss it. Costs to the Respondent.

Orders accordingly.

Ruling dated and signed at Kisumu, read this 5th day of March, 2026, virtually through Microsoft Teams Online Application.

E. ASATI

JUDGE

In the presence of:

Maureen: Court Assistant.

Kirabo for the Applicant

Rono for the Respondent.