

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT & LAND COURT AT NAIROBI  
ELC E110 OF 2023**

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**LALITA MORJARIA** - **1<sup>ST</sup> PLAINTIFF/RESPONDENT**  
**VIJAY MORJARIA** - **2<sup>ND</sup>**  
**PLAINTIFF/RESPONDENT**  
**BHAVIN MORJARIA** - **3<sup>RD</sup> PLAINTIFF/RESPONDENT**  
**VS**  
**NAIROBI CITY COUNTY** - **DEFENDANT/APPLICANT**

**RULING**

**[in respect to the application dated 2/5/25 filed by the Defendant]**

1. The Applicant/Defendant filed this application under Order 51 Rule of the Civil Procedure Rules, 2010, Sections 1A, 1B, 3A and 100 of the Civil Procedure Act, Art 159(2) (d) of the Constitution of Kenya and all other enabling provisions, seeking orders that;
  - a. The court be pleased to extend the time for the applicant to deposit the sum of Kshs 100,000/- as directed in the Ruling dated 8/4/25
  - b. The court to grant the applicant leave of 3 days to process and pay in court the sum of Kshs 100,000/-, being the monies deposited in court pending the hearing and determination of the appeal.
  - c. Costs of the application
2. The application is premised on the grounds annexed thereto and the supporting affidavit of Geoffrey Akumali, who introduced himself as the County Secretary of Nairobi City County.
3. That the court, in its ruling of 8/4/25, granted a stay of proceedings on condition that the applicant pays Kshs 100,000/- within 15 days of the ruling. That despite best efforts, the applicant failed to deposit the

money as ordered by the court. The applicant has now secured the funds, hence the need to seek an extension of time.

4. It was further deponed that the delay is not inordinate and that it is inexcusable due to the unavailability of funds and the internal bureaucratic processes typical of any government institution using public money. That if the orders sought are not granted, the appeal will be rendered nugatory and the liberty of the two officers will be curtailed. That the application has been made promptly without any undue delay. No prejudice shall be occasioned if the orders are granted.
5. Opposing the application, the respondents, through the replying affidavit of Vijay Morjaria, sworn on 24/9/25, deponed that the application seeks to obstruct justice and avoid the consequences of non-compliance with the lawful orders of the court. That the applicant has persistently disobeyed the order of the court and shown open disregard for the authority of the court. That the application is brought in bad faith, is an attempt to avoid responsibility for contempt of court, and is incurably defective.
6. The deponent avowed that the court's orders issued on 8/4/25 were self-executing and, in default, lapsed on 23/4/25. The applicant willfully failed to comply with the orders and only moved the court belatedly on 5/5/2025 after the orders had already lapsed.
7. The applicant was found to have failed to demonstrate that any internal requisition and approval processes had been initiated within the time allowed by the court. Without such evidence, no good cause has been demonstrated to justify the exercise of discretion in favour of the applicant.
8. That the application is merely an afterthought, triggered by the Respondent's letter dated 29/4/25, which inquired about the applicant's compliance with the orders, which letter did not elicit any response.
9. The deponent added that although the applicant lodged an appeal on 4/2/25, no substantive appeal was ever filed. Therefore, even if time was extended in this case, the applicant would still be out of time to appeal,

rendering the extension nugatory and a waste of judicial resources. The applicant failed to take prompt decisions once it became clear that compliance might not be possible, disentitling it of the discretionary reliefs sought.

10. The respondents were emphatic that invoking the provisions of Art 159 (2) (d) of the Constitution cannot cure the applicant's indolence, as equity abhors laches. They noted that an extension of time is an equitable remedy, not a right. In this case, it was argued that the applicant had come to court with unclean hands. The court was further urged not to extend indulgence to a contemnor who has approached the court with unclean hands, as granting the relief would undermine the authority of the court and breed impunity.
11. On 6/10/25, the parties elected to canvass the application by way of written submissions. The court has read and considered the submissions on record.
12. The key issue is whether the application is merited. Put differently, the question is whether the applicant is entitled to an extension of time to facilitate compliance with the court orders issued on 8/4/25.
13. [Order 50, rule 5.] Power to enlarge time. 6. Where a limited time has been fixed for doing any act or taking any proceedings under these Rules, or by summary notice or by order of the court, the court shall have power to enlarge such time upon such terms (if any) as the justice of the case may require, and such enlargement may be ordered although the application for the same is not made until after the expiration of the time appointed or allowed: Provided that the costs of any application to extend such time and of any order made thereon shall be borne by the parties making such application, unless the court orders otherwise.
14. The Supreme Court of Kenya in the case of **County Executive of Kisumu vs County Government of Kisumu & Others [2017] eKLR** while relying on its decision in the case of **Nicholas Kiptoo Arap Korir Salat vs IEBC & 7 others Application No. 16 of 2014 [2014] eKLR** the apex court stated as follows:

“the under-lying principles that a Court should consider in exercise of such discretion:

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 a 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 Respondents if the extension is granted;
6. Whether the application has been brought without undue delay; and
7. Whether in certain cases, like election petitions, public interest should be a consideration for extending time.”

**15.** Further, the Court of Appeal in **Vishva Stone Suppliers Company Limited v RSR Stone [2006] Limited [2020] eKLR** outlined the guiding principles in such cases inter alia:

“(i) The law does not set out any minimum or maximum period of delay. All it states is that any delay should be satisfactorily explained. A plausible and satisfactory explanation for delay is the key that unlocks the Court’s flow of discretionary power with the only caveat being that there has to be valid and clear reason upon which discretion can be favourably exercised.

(ii) Failure to attach a draft memorandum of appeal is not fatal to an application under rule 4 of the Rules of the Court so long as there is demonstration through other processes relied upon by such an applicant that the intended appeal is arguable.

(iii) An arguable appeal is not one that must necessarily succeed but is one which ought to be argued fully before court;

(iv) The right to a hearing is not only constitutionally entrenched, it is also the cornerstone of the rule of law.”

**16.** The Supreme Court of Kenya in the case of **Nick Salat -vs- Independent Electoral and Boundaries Commission & 7 Others (Application 16 of 2014) [2014] KESC 12 (KLR)** state that;

“... it is incumbent on the Applicant for an extension of time to provide the court with a full, honest and acceptable explanation of the reasons for the delay. He cannot reasonably expect the discretion to be exercised in his favour, as a defaulter, unless he provides an explanation for the default.”

**17.** Given the totality of the decisions cited above, the court is therefore called upon to consider the following factors when evaluating an application for an extension of time: the reasons or justifications, including an explanation for the delay, the measures undertaken, and the duration of the delay; the absence of prejudice to the opposing party and the overarching interests of justice; whether the applicant acted promptly upon discovering the cause of the delay; and any arguable case, particularly in the context of appeals. Conduct by the parties that amounts to negligence would disqualify an applicant from obtaining discretionary relief.

**18.** In this case, it is commonly acknowledged that the court, by its Ruling dated 30/1/25, found the applicants in contempt of court and directed them to purge the contempt within a period of 15 days, in default, show cause why they should not be punished for disobeying lawful orders of the court.

**19.** The ruling of the court above triggered an application dated 4/2/25, filed by the applicant, seeking a stay of the orders of the court issued on 30/1/25 pending the hearing and determination of their appeal.

**20.** Upon determining the application, the court in its Ruling delivered on 8/4/25 allowed the application in the following terms;

**a.** “That there shall be stay of the execution of the orders emanating from the Ruling delivered on 31/1/25.

- b.** The Applicants will forthwith deposit the sum of Kshs 100,000/- as security in Court within 15 days from the date hereof.
  - c.** That the Court do and hereby stays any further proceedings in relation to the Plaintiffs/Respondents application for contempt dated the 11/11/24 and the Ruling issued on the 31/1/25 pending the hearing and the determination of the appeal.
  - d.** In default of prayer number **b** above, the orders hereby issued shall lapse
  - e.** Costs of the application are in favour of the respondents.
- 21.** According to the application, it appears that the applicant failed to comply with the said court orders on the grounds that the funds were unavailable and that the internal processes took too long to allow the applicant to comply with the said court orders. It was further averred that the plaintiff is now in a position to comply and hence the need to seek orders for extension of time. The Applicants have, however, not shown any evidence in support of compliance of the Court's Orders or readiness to purge the same.
- 22.** I agree with the respondent that the applicant has not given any cogent evidence to show that the unavailability of funds or that the same was sought in the first place. In the absence of such evidence, the court is not satisfied that the applicant has tendered a satisfactory explanation for the delay.
- 23.** Is the application inordinate? According to the court's ruling, the applicant had until 23/4/25 to comply with the court orders. This application was filed on 2/5/25, about 26 days past the deadline. The court finds that the delay in the circumstances of this case is inordinate.
- 24.** Is there prejudice? The court notes that although the applicant filed a notice of appeal against the court's decision dated 30/1/25, there is no evidence that an appeal has been filed with the Court of Appeal. Absent the appeal, the other side is prejudiced because the hearing of the matter has stalled due to the delay in either prosecuting its appeal in the

Court of Appeal and the main suit in this court. The court finds that the prejudice is contrary to public policy, which holds that cases should be heard and determined expeditiously.

**25.** In the end, I find that the application is not merited and it is dismissed with costs in favour of the Respondents.

**26.** Orders accordingly

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 5TH DAY OF MARCH 2026 THROUGH MICROSOFT TEAMS.**

**J G KEMEI**

**JUDGE**

Delivered online in the presence of:

1. Ms. Juma H/B for Kamau Muturi for Plaintiffs
2. Mr. Ouma for Defendant
3. CA- Ms Yvette