

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT NYANDARUA**  
**ELC MISC NO E015 OF 2025**

**NYAKIO**

**NJOROGE.....PLAINTIFF**

**VERSUS**

**JAMES NJOROGE**

**WAINAINA.....DEFENDANT**

**RULING**

The Application before me is dated 21/10/2025. The Applicant seeks for the following orders: -

- a. Spent
- b. Spent
- c. Stay of execution of the Judgment in Nairobi MCCC 337 of 1988 pending the hearing and determination of the Applicant's Appeal to this Court against the Ruling delivered on 12/6/2025.
- d. Extension of time to file and serve the Memorandum of Appeal a draft copy of which is attached to the present Application.
- e. Costs of the Application.

The Applicant gives the Grounds of the Application as that the Judgment was delivered by the Honourable Abdulgadir Lorot H.R

on 12/6/2025 and the Applicant was aggrieved and consequently he is intent on appealing against the said Judgment. She further fears that the Respondent is in the process of executing the Decree and should this happen, the Appeal would be defeated and rendered nugatory.

The Applicant appeals to this Court that she is advanced in age, she is over 87 years old, sickly and unable to walk and is wholly dependent on relatives for sustenance. She urges the Court that her failure to file the Appeal in time was not deliberate but was occasioned by her incapacitation. She also states that the intended Appeal raises substantial, arguable issues and has overwhelming chances of success.

The Applicant is willing to provide security or abide by such reasonable conditions as the Court deems fit. The Applicant says she has brought the Application in good faith and without unreasonable delay and granting the Application will ensure that the Applicant is not shut out from the Appellate process on account of her frailty and circumstances beyond control.

She finally pleads that being elderly and vulnerable, she falls within a special category in the exercise of the Court's discretion. These circumstances and pleas are on the face of the Application and also duplicated in the Supporting Affidavit of Nyakio Njoroge sworn on even date where she says that the Judgment of the lower Court on 12/6/2025 was served upon her when she was

incapacitated and the period of illness and dependence reasonably accounts for the lapse of time in filing the Appeal.

The Applicant has attached a copy of prescription dated 12/8/2025 but which is contradictory in that at the top, it indicates it is from Lifestyle Pharmaceuticals Ltd. Nakuru, but at the bottom it has the rubber stamp of St. Patrick's Medical Clinic - Wanjohi.

I will disregard the Supplementary Affidavit by Nyakio Njoroge sworn on 26/1/2026 for the same though granted leave to do so, was filed without a Replying Affidavit from the Respondent.

I note that Judgment in Naivasha MCCC 337 of 1988 was delivered by the Chief Magistrate, Naivasha Honourable Abdulqadir Lorot on 12/6/2025. The current Application was filed on 21/10/2025 slightly over 4 months, only about 3 months over the stipulated period which cannot be said to be inordinate delay. That notwithstanding, the Applicant is quite advanced in age and it is necessary to appreciate that whether it is true that she was hospitalized at the time the Judgment was read or not, it is to be appreciated that she is likely not to have understood what to do even with explanation from a good Advocate. Her advanced age is to be taken in consideration and appreciated. But I do not agree with her argument that she falls within a special category deserving the Court's clemency, protection and consideration in exercise of its discretion. All persons are equal in the eyes of the law.

Since there is already a Draft Memorandum of Appeal, I hereby grant the Applicant 7 days to file and serve the Memorandum of Appeal or better still pay the filing fees for the draft Memorandum of Appeal in Court for the same to be considered to be duly filed.

As for Stay of Execution, what is before me is a Miscellaneous Application. The Court ought not to consider substantive issues in Miscellaneous suits. I have pronounced myself on this issue a couple of times in the past. See my Ruling in NYAMIRA ELC MISCELLENOUS SUIT NO. E007 OF 2023 where I said as follows: -

“.....Similarly, there is no suit (or appeal) in Court that is capable of ascertaining the rights of either party of how such rights have been trodden upon and the Court cannot proceed with the matter as it is. In the instant Motion, it is difficult to determine the rights of either party and the Applicant is underserving of the prayers sought.....”

Once the Memorandum of Appeal has been filed, the stay Application can be filed and the Court will consider it.

The Court has spoken.

**Ruling dated, signed and delivered at Nyandarua this 18th Day of March, 2026.**

**MUGO KAMAU**

## **JUDGE**

**In the Presence of: -**

**Court Assistant: Samson**

**Applicant's Counsel:**

**Respondent's Counsel: Mr. Nyaga.**