



**Omwoyo v Kantai (Environment and Land Appeal E020 of 2025)
[2026] KEELC 2004 (KLR) (10 April 2026) (Ruling)**

Neutral citation: [2026] KEELC 2004 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KILGORIS
ENVIRONMENT AND LAND APPEAL E020 OF 2025
MN MWANYALE, J
APRIL 10, 2026**

BETWEEN

JAMES NYAKONGI OMWOYO APPELLANT

AND

JAMES KANTAI RESPONDENT

RULING

1. Upon consideration of the application dated 23rd April 2025 which seeks leave of court to file an Appeal out of time from the judgment delivered on 20th December 2024 in Kilgoris CM ELC No. E054 of 2023 and additional prayers of stay of execution of the said judgment, which application was based on grounds inter alia, that there was non-communication from the Applicant's previous Advocates on the outcome of the said case and judgment till commencement of execution proceedings after taxation were commenced and certificate of costs issued thereon on 5th march 2025.
2. Upon further consideration of the Replying Affidavit of James Kantai, in opposition to the application who deponed inter alia
 - i. that the Applicant took part in the taxation proceedings through his previous advocates, hence the instant application is an afterthought meant to delay the execution of the costs,
 - ii. that no security was deposited as a condition of grant of the stay.
3. Noting that the Application was to be canvassed by way of written submissions and that neither the Applicant nor the Respondent filed any submissions, the court frames the only issue for determination as to whether or not the Application is merited?
4. As noted in paragraph 1 the Applicant seeks extension of time to lodge an appeal as well as stay of execution of the certificate of costs.



5. The Applicant did not file a supporting affidavit so as to depone on the reasons for seeking extension of time, and stay of execution.
6. The court has weighed in on the application as filed without a supporting affidavit, vis-a vis the principles of extension of time as stated in the case of Leo Silla Mutiso vs. Rose Hellen Wangari Nairobi Civil Application 255/1997 where the court held interalia; "it is now well settled that the decision whether or not to extend the time for appealing is essentially discretionary, it is also settled that in general the matters which the court takes into account in deciding whether to grant an extension of time are first the length of the delay, secondly the reason for the delay, the chances (possibly) of the appeal succeeding if the application is granted and fourthly, the degree of prejudice to the Respondent if the application is granted." and has further weighed the prayer for stay of execution vi-a vis the provisions of Order 42 Rule 6, and finds that whereas the application is fatally defective having been filed without a supporting affidavit in contravention of the provisions of Order 51 Rule 4 of the Civil Procedure Rules.
7. It follows that no evidence by way of an affidavit and/or depositions on oath as to the reasons for the delay, length of the delay were placed before court in order to support the prayer for extension of time, and no affidavit and/or depositions on oath to indicate whether the application was made timeously and the security as condition for grant of stay of execution.
8. Whereas the application is fatally defective and ought to be struck out having weighed the same against principles of extension of time and stay of execution, the application is so deficient and lacking in merit, that the order commending itself is not for striking out but for dismissal of the same with costs to the Respondent.

DATED AT KILGORIS THIS 10TH DAY OF NOVEMBER, 2025.

HON. M.N MWANYALE

JUDGE

In the presence of

CA – Emmanuel/Sylvia/Sandra

Mr. Tawo for Respondent

Mr. Mafumbo for Applicant

