



REPUBLIC OF KENYA



**Jeptoo & another v Tarus & 2 others (Miscellaneous Civil Application  
E008 of 2024) [2026] KEHC 4691 (KLR) (9 April 2026) (Ruling)**

Neutral citation: [2026] KEHC 4691 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KAPSABET  
MISCELLANEOUS CIVIL APPLICATION E008 OF 2024**

**JR KARANJA, J**

**APRIL 9, 2026**

**BETWEEN**

**ZANURA JEPTOO ..... 1<sup>ST</sup> APPLICANT**

**ZAKIA JEPKOSGEI ..... 2<sup>ND</sup> APPLICANT**

**AND**

**MAHAMOUD CHEMWOR TARUS ..... 1<sup>ST</sup> RESPONDENT**

**THE LAND REGISTRAR, NANDI ..... 2<sup>ND</sup> RESPONDENT**

**THE HON. ATTORNEY GENERAL ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

1. The Applicant, Zanura Jeptoo and Zakia Jepkosgei, vide the ex-parte Notice of Motion dated 28<sup>th</sup> July 2022 seeking the following substantial orders against the First Respondent, Mahamoud Chemwor Tarus and two others, being the Land Registrar, Nandi County [Second Respondent] and the Attorney General [Third Respondent] viz: -
  - i. A temporary stay of execution of the orders/ judgment delivered on 18<sup>th</sup> April 2016 by the Kadhis Court at Eldoret in Succession Cause No. 24 of 2015 pending the hearing and determination of this application inter-parties and thereafter pending hearing and determination of the intended appeal against the said judgment.
  - ii. The Applicants be allowed to file a memorandum of appeal out of time against the orders made on 18<sup>th</sup> April 2016 by the Kadhis Court in Eldoret Kadhis Court Succession Cause No. 24 of 2015.
2. The grounds for the application are in the body of the Notice of Motion and supported by the undated and unsigned affidavit of the First Applicant and further affidavit dated 22<sup>nd</sup> November 2023 as well as a further affidavit dated 28<sup>th</sup> May 2024 deponed by the Second Applicant. The First Respondent



opposed the Application on the basis of the averments contained in his replying affidavit dated 2<sup>nd</sup> November 2022. A temporary stay order was granted in this matter on the 17<sup>th</sup> January 2022 by the Environment and Land Court but was vacated on 5<sup>th</sup> July 2022, when the court divested its jurisdiction to deal with this matter.

3. However, on the 24<sup>th</sup> July 2024 after this matter was transferred to the High Court, an order to maintain the prevailing “status quo” was made such that the suit property was to be preserved and not be sold pending further directions from the court. The property is the Parcel of Land described as No. Nandi/Chepkongony/922.

The matter arises from the decision of the Kadhis Court made on 18<sup>th</sup> April 2016 in Succession Cause No. 24 of 2015.

The Applicants seek an order of stay of execution of the judgment pending hearing and determination of an intended appeal for which they are also applying for leave to have the appeal filed out of time.

4. The application was canvassed by written submissions filed herein by both parties save the Second and Third Respondents who really did not participate in the application. The primary original file from the Kadhis Court was not availed at the hearing of the application, neither was Eldoret Kadhis Court Case No. 2 of 2004 which was referred herein by the First Respondent in his submissions to the effect that a consent was recorded in that case on 26<sup>th</sup> August 2004 giving the suit property to the First Respondent.

5. Basically, the relevant file in the present circumstances is Eldoret Kadhis Court Succession Cause No. 24 of 2015. The Applicants seek to challenge the decision made in that case by way of an appeal to this court and in that regard, they seek leave to file the appeal out of time and also a stay of execution of the decision pending hearing and determination of the appeal. This is the essence of this application which has been given due consideration by this court on the basis of the supporting grounds and the rival submissions.

6. It is therefore this courts opinion that before an order of stay of execution pending appeal is made, the Applicants must first and foremost be granted leave to file an appeal out of time.

The draft memorandum of appeal filed herein indicates that the Applicant challenge the jurisdiction of the Kadhis Court in dealing with the suit property which they contend was not part of the estate of Kiptarus Chemwor, as it belonged to Tuiya Salim who was alive, hence her property could not have been part of any succession proceedings.

7. In her further affidavit dated 22<sup>nd</sup> November 2023, the first applicant indicated that both Applicants are daughters of Tuiya Salim and Kiptarus Chemwor. This fact was not disputed by the First Respondent in his replying affidavit, but he contended that the suit property was allocated to him pursuant to a consent entered by the parties on 26<sup>th</sup> August 2004 in Kadhis Court Cause Case No. 2 of 2004.

8. As noted hereinabove, Kadhis Court Case No. 2 of 2004 is irrelevant for the purposes of the intended appeal which is essentially aimed at Kadhis Court Succession Cause No. 24 of 2015, in particular, the judgment rendered therein on 18<sup>th</sup> April 2016. The merits or demerits of the appeal would not be matters for consideration in an application for leave to file appeal out of time as long as the appeal is prima-facie not frivolous and is generally arguable. As was stated in Patel Vs. E.A Cargo Handling Services Limited [1974] EA 75. An arguable appeal does not mean that the appeal shall definitely succeed.



9. With regard to leave to appeal out of time or rather extension of time to file appeal the guiding principles were set out by the Court of Appeal in the case of *Leo Sila Mutiso Vs. Rose Hellen Wangari Mwangi* [1999] 2EA 331, where it was stated: -

“It is now well settled that the decision whether or not to extend the time for appealing is essentially discretionary. It is also well settled that in general the matters which this 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, Thirdly, [possibly], the chances of the appeal succeeding if the application is granted and, fourthly the degree of prejudice to the Respondent if the application is granted.”

10. This application turns more on the question of the length of the delay and the reason for the delay. The impugned decision was rendered on 18<sup>th</sup> April 2016, the present application was filed on 28<sup>th</sup> July 2022 thereby translating to a period of about six [6] years delay. Clearly, this was inordinate delay, but the explanation given for the same by the Applicants do not appear to be unreasonable. In paragraph 19 of the Applicant’s supporting affidavit filed on 28<sup>th</sup> July 2022, it is averred that the proceedings before the Kadhis Court which resulted in the impugned judgment were conducted ex-parte.

11. A copy of the impugned judgment is annexed to the supporting affidavit and it shows that indeed the judgment was an ex-parte judgment.

Paragraph 28 of the same affidavit indicates that the Applicants were not aware of the proceedings and the ex-parte judgment until the 2<sup>nd</sup> December 2021, when they were served with a letter from the Second Respondent demanding surrender of the title deed respecting the suit or estate property. These reasons for the delay were not at all or substantially disputed by the First Respondent and indeed, all the Respondents. This court therefore upholds them as good reasons for the delay in filing appeal within prescribed time.

12. Consequently, the leave sought by the Applicants to file appeal out of time is hereby granted. The draft memorandum of appeal be and is hereby deemed as having been filed within time.

With regard to the order for stay of execution of the judgment pending appeal, it was noted hereinabove that a “status-quo” order was granted on 24<sup>th</sup> August 2024 for the purposes of preserving the suit property:

A court has unfettered discretion to grant a stay order, but the same ought to be exercised like all other discretions, judicially and not arbitrarily or capriciously nor should it be exercised on the basis of sentiment or sympathy.

13. As was stated in *Sharp Vs. Wakefield* [1891] AC 173, being judicial the discretion must be exercised: -

“..... According to rules of reason and justice not according to private opinion: [Rookes Case 48 LJMC 38]” according to law and not humour. It is to be, not arbitrary, vague, and fanciful, but legal and regular.”

“Blacks Law Dictionary 6<sup>th</sup> “Edition” at pg 1413 states that: -

“A “stay” does not reverse, annul undo or suspend what already has been done or what is not specifically stayed nor pass on the merits of orders of the trial court, but merely suspends the time required for performance of the particular mandates stayed, to preserve a status quo pending appeal.”

[See, *Kileleshwa Service Station Limited Vs. Kenya Shell Limited* [2012] KECA 13 KLR].



14. The existing order for maintenance of “status-quo” means that the stay being sought herein is for preservation of the suit or estate property pending hearing and determination of the appeal. Such an order is necessary so that the appeal is not rendered nugatory if it succeeds. The Respondent may in the circumstances not suffer prejudice nor substantial loss if stay is granted.

In the end result, the First Respondent’s opposition to this application is without merit and is hereby overruled and dismissed.

15. The application is therefore granted or allowed in terms of prayers [2] and [3] of the ex-parte notice of motion with costs to the Applicants.

Ordered accordingly.

**DATED AND DELIVERED THIS 9<sup>TH</sup> DAY OF APRIL 2026**

**HON. J. R. KARANJAH**

**JUDGE**

