

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT
KITALE
ELC APPEAL NO. E032 OF 2026

HARON BIWOTT KIPYEGO-----
APPELLANT/APPLICANT

VERSUS

LAURENT KIBIEGO CHEPKAITANY-----
RESPONDENT

RULING

- 1.** The applicant seeks leave to appeal out against a judgment of the lower court that was delivered on **8/7/2025**. He also seeks a stay of execution of the decree issued on **29/8/2026**, pending hearing and disposal of the intended appeal. The reasons are contained on the face of the application and in a supporting affidavit of Haron Biwott, sworn on **20/2/2026**.
- 2.** The applicant deposes that he is a long-distance truck driver operating fleets of vehicles between Mombasa and out of the country. The applicant deposes that when the judgment was delivered, he was out of the country until **mid-August 2025**, when he could not be reached by counsel, who had asked him to send a facilitation fee.

- 3.** The applicant deposes that at the time he was away, his advocate informed him that the memorandum of appeal was filed outside time by eight days, hence the request for extension of time. The applicant deposes that he has been given **30 days** to vacate the land, which he, as the firstborn son of his father, lives on together with his mother and siblings.
- 4.** The applicant deposes that his father sold **17 acres** out of the land and moved to another location to reside with his 2nd wife. The applicant deposes that he protested the sale, referring the matter to the area D.O., who mediated over the same, whereby he agreed with his father that the purchasers surrender **5 acres**, subject to his refunding part of the purchase price.
- 5.** The applicant deposes that whereas his father was retaining the original title deed, he later sold the land to the respondent, who has now obtained eviction orders against him, attached as **HBK-4(a)** and **(b)**. The applicant deposes that he has had a protracted case with his father, namely **Kitale CMC Land Case No. 201 of 2009**, which they eventually settled as per the agreement attached as **HBK-(1)**. He also attaches the demand letter dated **22/4/2009** protesting the sale marked as **HBK-(3)**.

6. The application is opposed through a replying affidavit of Laurent Kibiego Chepkaitany, sworn on **2/3/2026**. It is deposed that the applicant was served with a copy of the decree and a notice to vacate the land on **30/11/2025** as per annexure marked **LKC-1(a), (b), and (c)**. The respondent deposes that the applicant has approached the court with unclean hands, having threatened to kill him.
7. The respondent terms the application as bad in law, an afterthought, brought belatedly, as incompetent, and an abuse of the court process, to cure an incompetent appeal.
8. He terms the appeal as one which should not only be dismissed but also struck out. The respondent denies that the applicant's counsel ought to have sought leave to appeal out of time instead of filing the same without leave of court, making the application an abuse of the court process.
9. The respondent deposes that whereas the applicant says he instructed counsel on time, who was privy to the matter at the lower court, having represented the applicant therein, it is therefore apparent that the applicant is out to confuse or mislead the court, with no plausible or sufficient reasons to offer. The respondent deposes that he is yet to be served with

the alleged memorandum of appeal and that no copy is attached to the supporting affidavit.

- 10.** The respondent deposes that the applicant, having slept on his rights, ought not to be aided or rescued once he is wasting the court's precious and limited judicial time. The respondent deposes that after harvesting maize in October last year, he proceeded to plough the land, which consists of bad faith on his part. The respondent deposes that of serious concern is that after the delivery of judgment of the lower court, the original title deed, which had been produced as an exhibit, has gone missing to date.
- 11.** Extension of time to appeal is not a matter of right but at the discretion of the court.
- 12.** In **Leo Sila Mutiso -vs- Rose Hellen Wangari Mwangi, Nairobi Civil Appeal No. 251 of 1997,** the court said that the discretion is exercised by looking at the length of the delay, chances of the appeal succeeding, reasons for the delay, and the degree of the prejudice to the respondent, if the application is allowed.
- 13.** In **Cheptoo -vs- Chairman Music Society of Kenya Civil Appeal Appl. No. E779 of 2025 [2026] KESC 371 [KLR] (27th February 2026) (Ruling),** the court cited **Nicholas Arap Korir Salat -vs- IEBC & Others [2014] eKLR,**

emphasising that extension of time is not a right but an equitable remedy available only when sufficient cause is shown. The court cited **Mwangi -vs- Kenya Airways Ltd [2003] eKLR**, that the inability to obtain proceedings may constitute a sufficient cause of delay.

14. Lune -vs- Okwero & Another Civil Appl. No. E029 of 2025 [2026] KECA 74 [KLR] (30th January 2026) (Ruling), the court cited **Andrew Kiplagat Chemaringo -vs- Paul Kipkorir Kibet [2018] eKLR**, that what matters is not the length of the delay but whether the delay has been satisfactorily explained. The court said that the inadvertent misplacement of a file in a lawyer's chambers was a sufficient explanation.

15. Section 79 (G) of the Civil Procedure Act provides that an appeal may be admitted out of time if the appellant satisfies the court that he had a good and sufficient cause for not filing the appeal in time.

16. In Paul Musili Wambua -vs- Attorney General & Others [2015] KECA 471 [KLR], the court said that whether to grant an extension is not to be based upon whims or caprice but on sound reasons.

17. The delay in this matter was only seven days. The applicant says that he was out of the country. Instead of his lawyer seeking leave first, he filed an

incompetent appeal on **6/10/2025**. Mistakes of counsel, however, should not be visited upon an innocent client. The applicant has since owned up to his mistake and seeks to regularise the same. See **Francis Murigu Gichuri -vs- Douglas Kanguru Gichumbi Nyeri HC Civil Appeal No. 73 of 2001**. See **Florence Wairimu Mbugua & Others -vs- Timber Manufacturers & Dealers Ltd, SCOK Civil Appeal No. E019 of 2023**.

- 18.** The other issue to look into is the prejudice against the opposite party. The respondent has admitted that the lower court decree is yet to be executed. As held in **Muringa Co. Ltd -vs- Archdiocese of Nairobi Registered Trustees [2020] eKLR**, the court has to look into the prejudice each party stands to suffer, the need to balance the interests of each party, the conduct of the parties, public interest, and the need to exercise a right of appeal.
- 19.** On stay, the purpose is to preserve the substratum of appeal from dissipation or to avoid the appeal being rendered nugatory. A party has to prove substantial loss to be occasioned in the absence of a stay.
- 20.** Security should also be offered for the due execution of the decree, should the appeal not succeed.

- 21.**The applicant has given reasons why he thinks there will be irreparable loss if the eviction takes place. The respondent has displayed the eviction notice, which is due to expire. I think there will be no prejudice if the execution is pending as the appeal is heard and determined. The Memorandum of Appeal dated **14/8/2025** is deemed duly filed on time. The same be served upon the respondent.
- 22.**A temporary stay of execution is granted to last for only **one (1) year** from the date hereof.
- 23.**The appellant is to deposit **Kshs.30,000/=** security for costs before the court within **7 days** from the date hereof; otherwise, the stay orders shall lapse.
- 24.**Orders accordingly.

Ruling dated, signed, and delivered via **Microsoft Teams/Open Court** at **Kitale** on this **6th** day of **May 2026**.

In the presence of:

Court Assistant – Dennis

Miss Keya for the applicant present

Chebii for the respondent present



HON. C.K. NZILI
JUDGE, ELC KITALE.