



Mwangi v Njoroge; Kiambu Land Registrar & another (Interested Parties) (Environment and Land Miscellaneous Case E013 of 2025) [2025] KEELC 5337 (KLR) (17 July 2025) (Ruling)

Neutral citation: [2025] KEELC 5337 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT AND LAND MISCELLANEOUS CASE E013 OF 2025**

JM ONYANGO, J

JULY 17, 2025

BETWEEN

LILIAN WANJIRU MWANGI APPLICANT

AND

JOSEPH WAWERU NJOROGE RESPONDENT

AND

KIAMBU LAND REGISTRAR INTERESTED PARTY

ATTORNEY GENERAL INTERESTED PARTY

RULING

1. What is coming up for determination in this Ruling is the Applicant’s Notice of Motion Application dated 10th February 2025. The Application is anchored on Article 159 of *the Constitution* of Kenya, Sections 1A, 3A, 79G and 95 of the *Civil Procedure Act* and Order 42 Rule 6 of the Civil Procedure Rules 2010, Cap 21 of the Laws of Kenya. In the said application, the Applicant seeks the following orders:
 1. Spent.
 2. That this honourable court be pleased to grant the Applicant leave to appeal out of time against the Judgment by Honourable L.L. Gicheha (CM) delivered on 11th December 2024, in the Chief Magistrate’s Court at Kikuyu in ELC No. E036 of 2023.
 3. Spent.
 4. Spent.
 5. That upon hearing and determination of this Application, this Honourable Court be pleased to issue an order prohibiting the Respondent by himself, agents, servants and/or proxies from



filing a bill of costs against the Applicant and effecting transfer of the said parcel of land pending hearing and determination of the intended appeal.

6. That corollary to the foregoing, the Memorandum of Appeal filed by the Appellant/Applicant herewith deemed as properly and duly filed thus part of the record.
 7. That this Honourable Court be pleased to issue any other Order it deems fit and just in the circumstances.
 8. That the costs and incidental to this application do abide the result of the said appeal.
2. The Application is supported by the grounds on the face of it and by the Supporting Affidavit sworn by Elias Kibathi (the Applicant's Advocate). The Applicant's Advocate avers that the Applicant is dissatisfied with the decision of the trial court given on 11th December 2024, and she intends to file an appeal against it. He contends that they were only furnished with a copy of the impugned Judgment on 31st January 2025, despite requesting a copy of the same on 16th January 2025. He adds that he informed the Applicant about the Judgment and sought further instructions from her, however, she was out of town and was only able to respond on 7th February 2025.
 3. It is his position that the Applicant has an arguable appeal which raises weighty triable issues of law and facts which should be ventilated in court at a full hearing of the Appeal. He adds that the Appeal has high chances of success. In conclusion, he states that there has not been inordinate delay in filing this application.
 4. The Respondent opposes the Application through the Replying Affidavit sworn by him on 6th March 2025. It is his position that this application is frivolous and vexatious and that the prayers sought have already been overtaken by events.
 5. He depones that the Applicant's Advocate was present in court on 11th December 2024 during the delivery of the Judgment and even sought a 30-day stay of execution, which the court granted. He further depones that the 30-day stay of execution of judgment and the right to appeal had lapsed by 31st January 2025, and nothing was hindering him from executing the Judgment.
 6. He contends that contrary to the averments by the Applicant's Advocate, the Judgment was uploaded sometime on 20th January 2025, and his advocates downloaded the same on his behalf. He further contends that subsequently, on 24th January 2025, his Advocate requested copies of the decree and typed proceedings which were issued to him in February 2025.
 7. He states that at the lapse of the stay of execution period, he instructed his Advocate to proceed with the execution of the Judgment. In turn, his Advocate served the 2nd Interested Party with the court decree. The 2nd interested party proceeded to cancel the title deed issued in favor of the Applicant and issued another in his name in compliance with the court decree. It is his position that this application and the intended appeal have been overtaken by events, since that the Judgment has already been executed and the suit property has reverted to his name.
 8. He depones that the 2nd interested party did not enforce the court order until on 28th February 2025 and 3rd March 2025 respectively, which is more than 2 months from the date the Judgment was issued. He adds that the Applicant had all the time to move court accordingly to secure her rights.
 9. He questions the Applicant's Advocate's explanation that he communicated to his client, but the Applicant was out of town. He faults the Applicant for failing to instruct her advocate to proceed with the appeal at the time the advocate was informing her of the court's outcome if indeed she was interested with the appeal.



10. It is his position that the reason given by the Applicant for the delay in instituting the appeal is very weak and does not merit the court denying him his right to enjoy the fruits of the Judgment. He faults the Applicant for failing to produce any evidence in support of the averments made by her Advocate. He asserts that the orders sought therein are unenforceable and meant to cause embarrassment to this court given that the Judgment has already been executed.
11. Regarding the prayer for an order prohibiting him from filing a Bill of Costs, he states that the trial court awarded him costs of the suit and it is his right. He contends that the Applicant has not given any reasons barring him from pursuing the costs. He adds that the averments made by the Applicant's Advocate that she shall suffer substantial loss and irreparable damage if the orders sought are not granted are unsubstantiated. In conclusion, he urges this court to dismiss the application for being an abuse of the court process and award him costs.
12. The Application was canvassed by way of Written Submissions. The Applicant filed Written Submissions dated 7th April 2025 through the firm of Kiamah Kibathi & Company Advocates, while the Respondent filed Written Submissions dated 26th May 2025 through M/s Njoki Wanjira & Company Advocates.
13. Having perused the Application, the Replying Affidavit, and the parties' Written Submissions, the following key issues emerge for determination:
 - i. Whether the court should grant the Applicant leave to file an appeal out of time against the Judgment dated 11th December 2024.
 - ii. Whether the court should deem the Memorandum of Appeal annexed in the application dated 10th February 2025 as duly filed.
 - iii. Whether the court should issue an order prohibiting the Respondent from filing a bill of costs against the Applicant and effecting transfer of the said parcel of land pending hearing and determination of the intended appeal.

Analysis and Determination

Whether the court should grant the Applicant leave to file an appeal out of time against the Judgment dated 11th December 2024.

14. Section 79G of the *Civil Procedure Act* provides that:

“Every appeal from a subordinate court to the High Court shall be filed within a period of thirty days from the date of the decree or order appealed against, excluding from such period any time which the lower court may certify as having been requisite for the preparation and delivery to the appellant of a copy of the decree or order:

Provided that an appeal may be admitted out of time if the appellant satisfies the court that he had good and sufficient cause for not filing the appeal in time.”

15. It is clear that the court has a wide discretion to extend time within which to file an appeal although the discretion must be exercised judiciously. In the case of *Nicholas Kiptoo Korir Arap Salat vs IEBC* [2014] eKLR the Supreme Court held as follows:

“The underlying principles a court should consider in exercise of such discretion should include:



- a. Extension of time is not a right to a party. It is an equitable remedy that is only available to a deserving party at the discretion of the court.
- b. A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the court;
- c. Whether the court should exercise the discretion to extend time, is a consideration to be made on a case to case basis;
- d. Whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the Court;
- e. Whether there will be any prejudice suffered by the respondents if the extension is granted;
- f. Whether the application has been brought without undue delay; and

Whether in certain cases, like election petitions, public interest should be a consideration for extending time.”

16. The Applicant intends to appeal against the Judgment of the trial court delivered on 11th December 2024. It emerges from the pleadings that the Applicant was granted a 30-day stay of execution of the said Judgment, which lapsed on 11th January 2025. This court also notes that the decree of the trial court has already been executed.
17. The Applicant’s Advocate has contended that the delay in filing the appeal was occasioned by the fact that he was furnished with a copy of the impugned Judgment on 31st January 2025, despite requesting a copy of the same on 16th January 2025. He has further contended that he informed the Applicant about the Judgment and sought instructions from her; however, she was out of town and was only able to respond on 7th February 2025.
18. In rebuttal, the Respondent has contended that the reason given by the Applicant’s Advocate for the delay in instituting the appeal is very weak and that no evidence has been produced in support of the averments made. The Respondent has further stated that contrary to the averments by the Applicant’s Advocate, the Judgment was uploaded sometime on 20th January 2025, and his advocates downloaded the same on his behalf. He added that on 24th January 2025, his Advocate requested copies of the decree and typed proceedings which were issued to him in February 2025.
19. This application was filed on 10th February 2025, almost 60 days after the date of delivery of the Judgment. The Applicant’s reason for the delay does not hold water, given that the Respondent has stated that the Judgment was available online as of 20th January 2025. The Applicant has also not explained why she waited until the 30-day stay period lapsed for her to apply for a copy of the Judgment on 16th January 2025.
20. In the case of Andrew Kiplagat Chemaringo vs Paul Kipkorir Kibet [2018] eKLR, the Court of Appeal stated as follows:

“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 favour. There has to be valid and clear reasons upon which discretion can be favourably exercisable.”



21. I find that no valid reason or explanation for the delay in filing the appeal has been advanced by the Applicant to warrant the exercise of the court's discretion in her favour. The plea for extension of time to file the appeal is denied.

Whether the court should deem the Memorandum of Appeal annexed in the application dated 10th February 2025 as duly filed.

22. Given that the prayer for extension of time to file the appeal has been denied, it goes without saying that the prayer to deem the Memorandum of Appeal annexed in the application as duly filed is also denied.

Whether the court should issue an order prohibiting the Respondent from filing a bill of costs against the Applicant and effecting transfer of the said parcel of land pending hearing and determination of the intended appeal.

23. There being no appeal filed against the decision of the trial court, nothing stops the Respondent from pursuing the costs awarded in the Judgment. Consequently, I find that the Application dated 10th February 2025 lacks merit. It is hereby dismissed. The Applicant shall bear the costs of the Application.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 17TH DAY OF JULY 2025.

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J. M ONYANGO

JUDGE

In the presence of:

1. Miss Nekesa for the Applicant

Miss Wanjiru for the 1st Respondent

Court Assistant: Hinga

