



**Imbisi v Akhura & 2 others (Civil Appeal (Application)  
E248 of 2024) [2025] KECA 719 (KLR) (25 April 2025) (Ruling)**

Neutral citation: [2025] KECA 719 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT KISUMU  
CIVIL APPEAL (APPLICATION) E248 OF 2024  
HA OMONDI, JA  
APRIL 25, 2025**

**BETWEEN**

**ADRIANO MUHANDANCHI IMBISI ..... APPLICANT**

**AND**

**PETER SHIKUNZI AKHURA ..... 1<sup>ST</sup> RESPONDENT**

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

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

*(Being an application for enlargement of time to file stay of execution  
out of time from the Judgment of the Environment and Land Court at  
Kakamega (Ohungo, J.) dated 31st January 2024 in Case No. 372 of 2013)*

**RULING**

1. The brief background leading to this application is that Adriano Muhandachi Imbisi, the applicant herein had filed a suit at the Environment and Law Court (ELC) in Kakamega, being ELC Case No. 372 of 2013 seeking for cancellation of Peter Shikunzi Akhura the 1<sup>st</sup> respondent as the proprietor of the parcel of land known as Idakho/Shivakala/2146; and for orders that the land be registered in his name. On the other hand, the 1<sup>st</sup> respondent filed a separate suit at Kakamega Chief Magistrate's Court, being Kakamega CMELC No. 926 of 2018 seeking the eviction of the applicant from the same suit property; mesne profits; and an order for permanent injunction restraining the applicant from interfering with the said property
2. The two suits were consolidated and heard by Ohungo J, who in his judgment dated 31<sup>st</sup> January, 2024, dismissed the applicant's suit in its entirety and allowed the 1<sup>st</sup> respondent's prayers save for the prayer for mesne profits. The applicant being aggrieved by the judgment desired to lodge an appeal, but was late in filing an application for stay of execution, the Notice of Appeal and Memorandum of Appeal.



He then filed an application dated 8<sup>th</sup> March, 2024, seeking enlargement of time to file his application for stay of execution, Notice of Appeal, and Memorandum of Appeal.

3. The said Notice of Motion was partly allowed with regard to granting leave to file a Notice of Appeal and Memorandum of Appeal out of time. The applicant thus filed and served his appeal Kisumu Civil Application No. E248 of 2024, which is pending hearing and determination.
4. Subsequent to this, the applicant has now filed a Notice of Motion dated 25<sup>th</sup> November 2024, seeking orders to enlarge time to file an application for stay of execution of the judgment ELC Court in Kakamega in ELC Case No. 372 of 2013 delivered on 31<sup>st</sup> January 2024. In the supporting affidavit of even date, sworn by the applicant, he acknowledges that in Notice of Motion dated 8<sup>th</sup> March 2024 he prayed for enlargement of time to file the Notice of Appeal, Memorandum of Appeal and stay of execution.
5. He gives the same explanation that he presented before J. Ngugi, JA that he has been in occupation, possession, and use of the land for over 50 years; he has his family home on the suit land, which he considers as his ancestral land and inheritance. He is apprehensive that he would suffer irreparable loss and real prejudice, if the respondent were to execute the contested judgment dated and evict him from the said Land Parcel; and that 1<sup>st</sup> respondent has never occupied, possessed, used and or built on the suit land as he has his ancestral land elsewhere where he lives.
6. He argues that leave to file Notice of Appeal and Memorandum of Appeal having been granted, and having promptly filed the appeal herein, it is essential that a stay of execution be filed out of time to halt the respondent from executing the decree resultant of the said judgment to avoid rendering the said appeal nugatory and an exercise in futility.
7. In opposing the application, the first respondent Peter Shikunzi Akhura deposes that the applicant is pursuing a procedure that is not known in law as there is no law, whether in the court of appeal rules or otherwise, that has limited the time within which an application for stay of execution of a judgement can be filed before this appellate court; that there are no legal provisions either that permits this Court to order extension of time for filing an application for stay of execution because no time has been fixed for filing an application of this nature before this Court.
8. I must point out that in the application dated 8<sup>th</sup> the applicant had made an omnibus application before J. Ngugi, JA, which included prayers reserved for a three judge bench; and a prayer similar to what is presently. In dealing with the application, the learned Judge stated thus:

“...in the interest of substantive fairness ..., I elected to consider the only prayer that is properly before me as a single judge: the prayer for extension of time.

As aforesaid, the application is unopposed. However, I still must satisfy myself that it meets the threshold under our Rules...

...

I am, therefore, inclined to exercise the discretion granted by rule 4 of the Court of Appeal Rules to extend time to the applicant to file and serve a Notice of Appeal out of time. He shall do so within seven (7) days of today. The other prayers in the application are declined for the reasons given above.”

From the foregoing, I perceive that this applicant is dissatisfied with the orders as issued, seeks in a very subtle manner to have me review the findings of J. Ngugi as he did not address the prayer that was duly



before him, or he declined to make orders. If that is the case then the appropriate avenue of approach would have been under Rule 57 which provides that:

57.

- (1) Where under the proviso to section 5 of the Act, any person, being dissatisfied with the decision of a single judge:
  - a. ...; or
  - b. in a civil matter, wishes to have any order, direction or decision of a single judge varied, discharged or reversed by the Court, that person may apply therefor informally to the judge at the time when the decision is given or by writing to the Registrar within seven days thereafter.

9. If that is the applicant's grievance, then it is thus my considered view that this application is improperly before this Court, and offends Rule 57, if I were to deal with it. On the other hand, if the applicant is simply saying that the prayer was never addressed whatsoever, then I would echo what the respondent states, that the applicant is pursuing a procedure and a relief that is hopelessly misplaced in law, is alien to this appellate court; it is flagrantly flawed and therefore incapable of being granted. I decline to issue the orders sought; and dismiss the application with costs to the 1<sup>st</sup> respondent.

**DATED AND DELIVERED AT KISUMU THIS 25<sup>TH</sup> DAY OF APRIL, 2025.**

**H. A. OMONDI**

.....

**JUDGE OF APPEAL**

I certify that this is a true copy of the original.

Signed

**DEPUTY REGISTRAR**

