



**Macharia v Kahonge (Suing as the legal representative of Joseph Kahonge Muthondu-Deceased)  
(Civil Application E041 of 2022) [2022] KECA 1381 (KLR) (14 December 2022) (Ruling)**

Neutral citation: [2022] KECA 1381 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAKURU  
CIVIL APPLICATION E041 OF 2022  
F SICHALE, JA  
DECEMBER 14, 2022**

**BETWEEN**

**JOHN THUO MACHARIA ..... APPLICANT**

**AND**

**ELIZABETH MUTHONI KAHONGE (SUING AS THE LEGAL  
REPRESENTATIVE OF JOSEPH KAHONGE MUTHONDU-  
DECEASED) ..... RESPONDENT**

*(An Application for extension of time to file and serve Notice of Appeal out of time against the Ruling of the Environment and Land Court of Kenya at Nyahururu (Angima, J.) dated 12th May 2022. INELC Case No. 57 of 2019 (Formerly Nakuru HCCC No. 112 of 2003))*

**RULING**

1. John Thuo Macharia (the applicant herein), has *vide* a motion dated July 14, 2022, invoked the jurisdiction of this court pursuant to rule 4 of this [Court's Rules](#) seeking the following orders:
  1. Spent.
  2. That this honourable order do grant a stay of proceedings in *ELC Case Number 57 of 2019*, (Formerly Nakuru *HC Civil Suit Number 112 of 2003*) in Nyahururu wherein judgment is scheduled for September 22, 2022; (Sic).
  3. That this honourable court do grant the applicant leave to appeal out of time against the ruling and order of court of May 12, 2022 and/or deem the annexed memorandum of appeal duly filed upon payment of the requisite court fees;
  4. That prayer 2 and 3 above be granted pending interpartes hearing of this application; and
  5. That costs of this application be in the cause.”



2. The motion is supported on the grounds on the face of the motion and an affidavit sworn by the applicant who deposed, *inter alia*, that he was aggrieved by the ruling delivered by Angima, J on May 12, 2022, denying him leave to amend his defence and that the delay in filing the appeal was due to late acquisition of typed ruling from the court registry.
3. The motion was opposed *vide* a replying affidavit sworn on October 7, 2022, by Eunice Wamucii Ndegwa, counsel who has the conduct of this matter on behalf of the respondent who deposed, *inter alia*, that that the applicant had not explained in his affidavit why neither himself nor his counsel were present when the aforesaid ruling was being delivered yet they were in court when the date for its delivery was given on March 2, 2022 and that even assuming a reasonable explanation was given for the delay, the instant motion had been overtaken by events as judgment had already been delivered in Nyahururu ELC *Case No 57 of 2019*.
4. The parties did not file written submissions despite having been served with a hearing notice on October 4, 2022.
5. I have carefully considered the motion, the grounds on the face of the motion, the supporting affidavit, the replying affidavit, and the law
6. The applicant in the instant case is seeking stay of proceedings in *ELC Case No 57 of 2019* and leave to appeal against the ruling by Angima, J dated May 12, 2022, where he was denied leave to amend his defence.
7. Regarding the order of stay proceedings, the jurisdiction of this court has been invoked wrongly as I do not have the jurisdiction/powers to issue orders of stay of proceedings, sitting as a single judge. Additionally, judgment in the said matter has already been delivered and even assuming I had the requisite jurisdiction, the order of stay of proceedings as sought has already been overtaken by events.
8. Additionally, the applicant is seeking extension of time to appeal out of time against a ruling of May 12, 2022, in which he was denied leave to amend his defence. I note that judgment in the said matter was delivered on September 22, 2022 and as such the applicant's application has been wholly overtaken by events.
9. In view of the above, the applicant's motion dated July 14, 2022 is without merit and the same is hereby dismissed with no order as to costs.

Orders accordingly.

**DATED AND DELIVERED AT NAKURU THIS 14<sup>TH</sup> DAY OF DECEMBER, 2022.**

**F. SICHALE**

**JUDGE OF APPEAL**

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

*Signed*

**DEPUTY REGISTRAR**

