



REPUBLIC OF KENYA



**KENYA LAW**  
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**Tenkeya v Oenga t/a Olive or Twist (Environment and Land Appeal  
E006 of 2025) [2025] KEELC 784 (KLR) (25 February 2025) (Ruling)**

Neutral citation: [2025] KEELC 784 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO  
ENVIRONMENT AND LAND APPEAL E006 OF 2025  
MD MWANGI, J  
FEBRUARY 25, 2025**

**BETWEEN**

**MARIAS PAKINE TENKEYA ..... APPELLANT**

**AND**

**KEPHA NYAMONGO OENGA T/A OLIVE OR TWIST ..... RESPONDENT**

*(Being an appeal from the ruling of Hon. KAGONI M. SPM  
Principal Magistrate Court at Kajiado entered on 10th December  
2024 in Magistrates Court at Kajiado Civil Suit No. E42 of 2020)*

**RULING**

(In respect of the notice of motion dated 28/1/2025 seeking stay of execution of the ruling and the consequential orders issued on 10<sup>th</sup> December 2024 in Kajiado MCCC E42 of 2020 (Hon. Kagoni, SPM))

1. The application under consideration is by the Appellant seeking to stay execution of the ruling and orders issued on 10<sup>th</sup> December 2024 in Kajiado MCCC/E42 of 2020 (Hon. Kagoni, SPM). The application is grounded on Order 42 Rule 6 of the *Civil Procedure Rules* and Sections 3A and 79G of the *Civil Procedure Act*. It is further prayed that ‘the application and the appeal be filed out of time’. I guess what the Applicant is seeking is that the application and the appeal be admitted out of time under Section 79G of the *Civil Procedure Act*.
2. 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 30 days from the date of the decree or order appealed against. The provisions of section 79G are replicated in section 16A of the *Environment and Land Court Act* that makes provisions for the jurisdiction, functions and powers of this court.



3. Both sections provide 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.

### **Issues for determination**

4. Considering the application before me, the issues for determination are;
  - a. Whether the appeal was filed out of time; and
  - b. Whether the application is merited.

### **Determination**

5. The ruling appealed against in this appeal was issued on 10<sup>th</sup> December 2024. The memorandum of appeal and the application herein were filed on 28<sup>th</sup> January 2025. The question then is whether the appeal was filed out of time. Whereas the number of days between the date of delivery of the ruling and the date of filing the memorandum are over thirty (30), Order 50 rule 4 of the [Civil Procedure Rules](#) exempt the period between 21<sup>st</sup> day of December in any year and 13<sup>th</sup> day of January in the year next following (both days included) from any computation of time under the Rules or any order of court except in respect of a temporary injunction.
6. With the provisions of Order 50 rule 4 in mind, the memorandum of appeal was filed within twenty five (25) days from the date of the ruling. It was therefore for purposes of Section 79G of the [Civil Procedure Act](#) and Section 16A of the [ELC Act](#), filed within time. The application for its admission out of time was therefore unnecessary.
7. On the prayer for stay pending appeal, the Applicant's claim is that the trial court is seeking to enforce an order that had expired. According to the Applicant, the said order was issued ex parte on 1<sup>st</sup> December 2020, pending hearing and determination of the application dated 1<sup>st</sup> December 2020 before the trial court. The application that was scheduled for hearing on 15<sup>th</sup> December 2020 was however not heard. Consequently, the Applicant opines that the orders automatically lapsed as they were not extended.
8. The Applicant therefore affirms that he cannot be held in contempt of non-existent orders. He faults the trial court for holding him in contempt of non-existent orders.
9. The consequences of contempt of court are dire and may include incarceration of the contemtor. The applicant has actually been summoned to court for sentencing.
10. I am persuaded that the Applicant stands to suffer substantial loss unless the order of stay is made.
11. The applicant too challenges the jurisdiction of the trial court to entertain the case between the parties. His appeal raises triable issues that need to be considered on their merits.
12. I do note that the application has been filed without unreasonable delay.
13. I therefore issue an order of stay of execution against the ruling and order issued in Kajiado MCCC E42/2020 (Kefa Nyamongo Oenga t/a Olive or Twist –vs- Mariane Pakine Tenkeya) on 10<sup>th</sup> December 2024, pending the hearing and determination of the appeal herein.
14. The costs of the application shall be in the cause.

It is so ordered.



**DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 25<sup>TH</sup> DAY OF FEBRUARY  
2025**

**M.D. MWANGI**

**JUDGE**

In the virtual presence of:

Mr. Kansime for the Appellant/Applicant

N/A by the Respondent

Court Assistant: Mpoye

**M.D. MWANGI**

**JUDGE**

