



**Abdalla & 2 others v Zakaria & 3 others (Environment and Land Appeal
E003 of 2022) [2024] KEELC 5354 (KLR) (19 July 2024) (Ruling)**

Neutral citation: [2024] KEELC 5354 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYERI
ENVIRONMENT AND LAND APPEAL E003 OF 2022**

**JO OLOLA, J
JULY 19, 2024**

BETWEEN

**HUSSEIN ALI ABDALLA ALIAS BILLY 1ST APPELLANT
HALIMA WANJIRU WAWERU 2ND APPELLANT
RUKIA NJOKI HAMISI 3RD APPELLANT**

AND

**SUSAN WANJIRU ZAKARIA 1ST RESPONDENT
NATIONAL LAND COMMISSION 2ND RESPONDENT
COUNTY LAND REGISTRAR 3RD RESPONDENT
COUNTY GOVERNMENT OF NYERI 4TH RESPONDENT**

RULING

1. By the Notice of Motion dated and filed herein on 31st May 2023, Hussein Ali Abdalla alias Billy, Halima Wanjiru Zakaria and Rukia Njoki Hamisi (the Appellants) pray for an order that the Honourable Court be pleased to extend time within which the Appellants can comply with the condition to deposit Kshs. 300,000/= in a joint interest earning account in the name of the Advocate representing the parties herein.
2. The application which is supported by an affidavit sworn by Rukia Njoki Hamisi (the 3rd Appellant) is based on the grounds:
 - i). That the court did on 16th February 2023 grant an order of stay of execution of the decree issued in Nyeri CMCL & E Case No. 92 of 2018 on condition that the Appellant do deposit Kshs. 300,000/= in a joint interest earning account in the names of the Advocates representing the parties herein within 45 days;



- ii). That owing to the impecunious circumstances that the Appellants find themselves, they did not manage to raise the Kshs. 300,000/= within the given 45 days;
 - iii). That the Appellants are still trying to raise the said amount and they require 45 more days to raise the amount and hence pray for extension of time;
 - iv). That it is only mete and just and in the interest of justice that the orders sought be granted.
3. Susan Wanjiru Zachariah (the 1st Respondent) is opposed to the application. In her Replying Affidavit sworn on 13th June 2023 and filed herein on 19th June 2023, the 1st Respondent avers that the time for compliance with the court order lapsed on 2nd April 2023 and that this application had been made some 59 days late with no sufficient explanation as to the delay.
 4. The 1st Respondent further urges the court to consider that this is the third time that the Appellants are praying for an order of stay of execution having made the same prayer once in the lower court and twice before this court.
 5. I have carefully perused and considered both the application as well as the response thereto. I have similarly perused and considered the submissions placed before the court by the Learned Advocates representing the parties herein.
 6. By this application before the court, the Appellants pray for enlargement of time to enable them to deposit the sum of Kshs. 300,000/= in the joint interest earning account in the names of the Advocates acting for the parties herein as ordered by the court on 16th February 2023.
 7. In regard to matters of enlargement of time, Order 50 Rule 6 of the Civil Procedure Rules, 2010 provides as follows:-

“Where a limited time has been fixed for doing any act or taking any proceedings under these rules, or by summary notice, the court shall have power to enlarge such time upon such terms (if any) as the Justice of the case may require, and such enlargement may be ordered although the application for the same is not made until after the expiration of the time appointed or allowed.”
 9. As was stated in Dilpack Kenya Limited –vs- William Muthama Kitonyi [2018] eKLR:

“In an application for extension of time, where the court is being asked to exercise discretion, there must be some material before the court to enable its discretion to be so exercised. Once there is non-compliance, the burden is upon the party seeking indulgence to satisfy the court why the discretion should nevertheless be exercised in his favour and the rule is that where there is no explanation, there shall be no indulgence.”
 10. In the matter before me, the 3rd Appellant depones that she was unable to comply with the court orders issued on 16th February 2023 on account of the fact that she is 77 years old and that she was depending on her relatives to help her raise the amount. It was however notable that the 3rd Appellant does not mention the ages of the 1st and 2nd Appellants and why they were not able to raise the security required. It was also telling that no explanation was given as to why this application was filed some 59 days from the date that the Appellants were required to comply with the orders of the court.



11. As was stated in Republic –vs- County Chief Officer, Finance & Economic Planning, Nairobi City County Ex-parte David Mugo Mwangi [2018] eKLR:-

“..... Court orders are not made in vain and are meant to be complied with. If for any reason a party has difficulty in complying therewith, the honourable thing to do is to come back to court and explain the difficulties faced by the need to comply with the order...”

12. In failing to comply with the court orders and coming to court for extension of time some 59 days after they were meant to comply, the Appellants have clearly demonstrated that they have very little regard for the order that were issued by the court. That being the case, the Appellants are not deserving of the court’s discretion to extend time in their favour.

13. In the premises, I find no merit in the Motion dated 31st May 2023. I dismiss the same with costs to the 1st Respondent.

DATED, SIGNED AND DELIVERED AT NYERI THIS FRIDAY 19TH DAY OF JULY, 2024.

In the presence of:

No appearance for the Appellant.

Mr. Waweru Macharia for the Respondent.

Court Assistant: Michael

J. O. OLOLA

JUDGE

