



**Maina v Gatuguta & 2 others (Environment and Land Appeal
E047 of 2023) [2024] KEELC 7238 (KLR) (29 October 2024) (Ruling)**

Neutral citation: [2024] KEELC 7238 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND APPEAL E047 OF 2023
MD MWANGI, J
OCTOBER 29, 2024**

BETWEEN

JAMES MUNGA MAINA APPELLANT

AND

JOSEPHINE WANJIKU GATUGUTA 1ST RESPONDENT

HANNA WAITHERERO GATUGUTA 2ND RESPONDENT

PETFRIEND AUCTIONEERS 3RD RESPONDENT

*(In respect of the application dated 21st November 2023,
seeking leave to lodge a memorandum of appeal out of time)*

RULING

Background

1. The application before me is a Notice of Motion dated 21st November 2023, brought under the provisions of Sections 1A, 3B and 79G of the *Civil Procedure Act*. The Applicant seeks leave to lodge a Notice of Appeal and subsequently a Memorandum of Appeal out of time against the judgment of Honorable A. Muma, (Acting Chair/Member) delivered on 27th September 2023 in the Business Premises Rent Tribunal Case No. E437 of 2023. The Applicant further prays for a stay of execution pending hearing and determination of the intended appeal amongst the other orders listed thereunder, including an order that the Respondent returns the Applicant's goods attached from the subject premises.
2. The application is supported by the various grounds on the face of it. The Applicant avers that the delay in filing the appeal was occasioned by circumstances beyond his control. He states that he had some financial constraints at the material time hence the inability to instruct an Advocate to act for him within the stipulated time for lodging an appeal.



3. The Applicant highlights some of the grounds of his intended appeal including denial of the right to be heard contrary to the rules of natural justice. He affirms that he has a triable appeal with high chances of success. He argues that the delay in filing the appeal was not inordinate.
4. The Respondents opposed the application by way of the replying affidavit of Josephine Wanjiku Gatuguta sworn on 26th August 2024. The Respondents averred that the filing of the application by the Applicant amounted to an academic exercise since execution had already taken place and the Applicant since evicted from the suit premises. This was pursuant to the order of the Tribunal that directed the Applicant to continue paying rent failure to which the Respondents were at liberty to distress for rent and proceed to evict him and break into the subject premises without any further reference to the Tribunal.
5. The averments in the replying affidavit of the Respondent were not contradicted by the Applicant. The Applicant did not seek the leave of the court to file a further/supplementary affidavit.

Determination.

6. Section 79G of the *Civil Procedure Act* provides that an appeal from the subordinate courts to the High Court shall be filed within 30 days from the date of the decree or order appealed from. Nonetheless, 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.
7. The Applicant in this case has cited the Supreme Court of Kenya decision in *Nicholas Kiptoo Arap Salat –v- IEBC and 7 others* (2014) eKLR, where the Supreme Court of Kenya laid down the principles to be considered in an application for extension of time. The Supreme Court stated that in exercising the discretion to extend time, a court needs to consider amongst other issues, whether there is a reasonable explanation for the delay and whether the application has been brought without unreasonable delay. Each case however is to be considered on its own merits.
8. At the time of filing the application, a total of 55 days had lapsed since the date of the delivery of the ruling sought to be appealed from. The Applicant's explanation is that he was experiencing financial difficulties and was therefore unable to instruct his Advocate to file the application within the 30 days' time provided for under the law.
9. In the circumstances of this matter, I do not consider a period of 25 days over and above to stipulated time of 30 days as amounting to undue delay. The court is alive to the hard-economic times that the country has gone through since the onset of the COVID-19 pandemic. The explanation by the Applicant in the opinion of the court is reasonable.
10. On the prayer for stay of execution, the same is overtaken by events. As I noted earlier, the assertion by the Respondent that execution had already happened and the Applicant evicted from the suit premises has not been contradicted by the Applicant. Considering that what the Applicant seeks to prevent by an order of stay of execution has already happened, the court can only arrive at one conclusion; that the Applicant's application for stay of execution is moot. Granting the order of stay of execution will be a mere academic exercise.
11. The Court of Appeal in the case of *Okiya Omutatah Okoiti & 2 others –vs- A.G. & 4 others* (2020) eKLR, while citing with approval the case of *Daniel Kaminja and 3 others (Suing as Westlands Environment Caretaker Group) vs County Government of Nairobi* 2019 eKLR, stated that,

“ A matter is moot if further legal proceedings with regard to it have no effect, or events have placed it beyond the reach of the law. Thereby, the matter has been deprived of practical



significance or rendered purely academic. Mootness arises when there is no longer an actual controversy between the parties to a court case and any ruling by the court would have no actual practical impact. No court of law will knowingly act in vain....a suit is academic where it is merely theoretical, makes empty sound and is of no practical utilitarian value to the plaintiff even if judgment is given in his favor.”

12. The court will not issue orders in vain. The prayer for stay of execution and all other consequential prayers are disallowed.
13. I will therefore only allow the Applicant the prayer for leave to file the intended appeal out of time.
14. Consequently, leave is granted for the Applicant to file the intended appeal within 14 days of this ruling. The costs of this application shall be in the cause.

It is so ordered.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 29TH DAY OF OCTOBER 2024.

M.D. MWANGI

JUDGE

In the virtual presence of:

Mr. Gode h/b for Mr. Kuria for the Applicant

N/A for the Respondents

Court Assistant: Yvette

