



**County Government of Laikipia v Mainya Travellers Sacco (Environment & Land
Miscellaneous Case E004 of 2024) [2024] KEELC 13559 (KLR) (22 November 2024) (Ruling)**

Neutral citation: [2024] KEELC 13559 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYAHURURU
ENVIRONMENT & LAND MISCELLANEOUS CASE E004 OF 2024**

AK BOR, J

NOVEMBER 22, 2024

BETWEEN

COUNTY GOVERNMENT OF LAIKIPIA APPLICANT

AND

MAINYA TRAVELLERS SACCO DEFENDANT

RULING

1. Through the application dated 28/5/2024, the Applicant seeks stay of execution of the judgment delivered by the Senior Principal Magistrate on 30/5/2023 in Nyahururu CM ELC Case No. 269 of 2018 and extension of time to file an appeal against that judgment. The Applicant also sought stay of execution pending hearing and determination of the intended appeal.
2. The application was made on the grounds that on 30/5/2023 the trial court entered judgment in favour of the Respondent but the Applicant became aware of the judgment on 5/6/2023. The Applicant explained that it took time before it obtained copies of proceedings and judgment and that it obtained copies of the judgment in February 2024 and was apprehensive that the Respondent may execute the judgment.
3. The application was supported by the affidavit of Alexander Muchemi Muthee, the County Attorney, who deponed that the Applicant obtained copies of the typed judgment on 23/2/2024, which is when they were able to read it and determine their grounds of appeal. He averred that the grounds in the Memorandum of Appeal raised bona fide points of law and facts regarding land issues which are highly emotive in Kenya. He deponed that the application had been made timeously and without inordinate delay. He exhibited copies of the correspondence written to court seeking to be supplied with copies of the judgment and typed proceedings. In one of the emails dated 5/6/2023, it was mentioned that the judgment in the court file was handwritten and illegible. There is also a certificate of delay showing that the Applicant applied for copies of the proceedings on 13/7/2023.



4. Paul Mwangi Gikonyo, the Chairman of the Respondent, swore the replying affidavit opposing the application. He deponed that the Applicant was guilty of laches and indolence having delayed for 12 months in filing the application. He referred the court to the decree which showed that the Applicant's advocate was in court on 30/5/2023 when the judgment was delivered and that it ought to have lodged the appeal within 30 days. He added that the Respondent was in occupation of the suit property where its members were operating a matatu business and that granting stay would lead to their eviction. He maintained that the members of the Respondent stood to lose their source of livelihood if they were evicted from the suit property.
5. The court directed parties to file written submissions which it has considered. The Applicant submitted that the factors to be considered in determining such an application are the length of the delay and the reason for the delay. It maintained that it had explained the delay while relying on the certificate of delay issued on 22/5/2024. It conceded that it was represented by counsel when the judgment was delivered but the counsel informed it that the judgment was handwritten and required typing because it was not legible. Further, that the Applicant's advocate made several attempts to obtain copies of the judgment but had to wait until 22/5/2024. It relied on Section 79 (G) of the Civil Procedure Act on the exclusion of the period the lower court may certify as having been necessary for the preparation and delivery of the copy of the decree. It maintained that the appeal raised grounds with high chances of success. It maintained that the Respondent will not suffer any prejudice because the Applicant had demonstrated that there was no threat of eviction. It added that the decree which the Respondent annexed to the affidavit could pave way for construction works by the Respondent which would be prejudicial to the Applicant if that were allowed to continue.
6. The Respondent cited Section 79 (G) of the Civil Procedure Act that it contemplated that an appeal would be filed first then the application seeking to have the appeal admitted out of time for good and sufficient reasons. It invited the court to dismiss the application based on this interpretation of the law. On delay, it submitted that the delay was for more than a year and that the Applicant could have drafted its memorandum of appeal since the advocate was aware of the contents of the judgment. It added that the email extracts showed that by 11/10/2023 the judgment had been proof-read. Moreover, that the proceedings were collected on 21/2/2024 and the certificate was issued three months later. The Respondent maintained that the delay had not been satisfactorily explained.
7. On the grounds for grant of stay of execution, the Respondent submitted that the Applicant had failed to furnish evidence or facts to show the court what kind of loss will be occasioned to it. The Respondent submitted that it was in full occupation of the suit property and that its members stood to lose their source of livelihood if they were evicted from the suit land.
8. The issue for determination is whether the court should grant orders for stay of execution and enlarge time for the filing of an appeal by the Applicant. The reason given by the Applicant for failing to lodge its appeal within time was that it had applied for a typed copy of the judgment since what was in the court file was handwritten and not legible. This was not controverted by the Respondent and would be attributed to the court and not the Applicant. A party dissatisfied with a decision can only prepare and narrow down its grounds of appeal which must be set out concisely in the Memorandum of Appeal if it has read and understood the judgment of the trial court. The emails exchanged between the court and the Applicant confirm that the Applicant was not lax in pursuing copies of the judgment and the proceedings from the court.
9. The main ground for seeking stay of execution is the apprehension the Applicant has that the Respondent may commence construction on the suit land before its intended appeal is heard. The



Applicant admitted that the Respondent was in possession of the suit land and added that there was no threat of eviction.

10. Based on the foregoing, the application is merited. The court issues the following orders:
- a. The court stays execution of the decree emanating from the judgment of the Senior Principal Magistrate delivered on 30/5/2023 in Nyahururu CM ELC Case No. 269 of 2018 pending hearing and determination of the Applicant's intended appeal.
 - b. The time for lodging an appeal against that decision is extended.
 - c. The Applicant will file and serve its appeal within 14 days of today.
 - d. The Respondent is awarded the costs of the application.

DELIVERED VIRTUALLY AT NAIROBI THIS 22ND DAY OF NOVEMBER 2024.

K. BOR

JUDGE

In the presence of: -

Ms. Dahlin Mathairo for the Applicant

Mr. Gakenia Gicheru for the Respondent

Court Assistant- Vanessa Muiruri

