



**Wambugu v Lugaba (Environment and Land Appeal E212 of 2024)
[2025] KEELC 3574 (KLR) (13 February 2025) (Ruling)**

Neutral citation: [2025] KEELC 3574 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND APPEAL E212 OF 2024**

JG KEMEI, J

FEBRUARY 13, 2025

BETWEEN

CAROLINE NYAKINYUA WAMBUGU APPELLANT

AND

SIMON JOHN KAMPA LUGABA RESPONDENT

(with respect to the Appellant/Applicant's Notice of Motion dated the 9/12/2024 seeking leave to file an appeal out of time and stay of execution of the judgement)

RULING

1. Before me is the application dated the 9/12/2024 seeking the following orders;
 - a. Spent.
 - b. That the Honourable court be pleased to grant leave to the Applicant to file an appeal.
 - c. That the Honourable court be pleased to grant an order of stay of execution of the judgment Magistrate court Environment Land Court issued on 31/10/24 and all consequential orders issued at the Magistrate's court Environment and Land Court Case No.MCELC No.E254 of 2023 pending the hearing and determination of this appeal.
 - d. That the Honourable court be pleased to grant an order of stay of execution of the judgment Magistrate court Environment Land Court issued on 31/10/24 and all consequential orders issued at the Magistrate's court Environment Land Court case No.MCELC No.e254 of 2023 pending the hearing and determination of this appeal.
2. The application is premised on the grounds annexed thereto and the supporting affidavit of the applicant Caroline Nyakinyua Wambugu sworn on the 9/12/24. The deponent states that she is aggrieved with the decision of the Court delivered on the 31/10/2024 for which she has preferred an appeal. She has impugned the judgement on a number of fronts interalia that the Court failed to



determine an application for joinder of a third party in the proceedings and that the Hon Learned Magistrate failed to stipulate the amount of monies owed thus allowing room for arbitrary and exploitative demands. Further that neither the judgment nor the orders for stay of execution allowed for 30 days was uploaded to the CTS portal.

3. That arising from the failure to upload the judgment she visited the Registry on 14/11/24 where she was provided with the judgement albeit unsigned. That this has occasioned her delay in taking timely legal action including seeking stay of execution of the said judgment.
4. She further urged the Court that her appeal has a high chance of success and the orders are essential to ensure the appeal is not rendered nugatory. A memorandum of appeal filed on the 9/12/24 was annexed to the application.
5. In opposing the application, the respondent filed grounds of opposition dated the 16/1/25 on the following grounds;
 - a. The Notice of motion is incompetent and incurably defective
 - b. That the purported appellant has no locus to challenge the eviction order while claiming not to be the respondent's tenant.
 - c. That the purported appellant is an Advocate of the High Court of Kenya and understands contempt orders trespass and unjust enrichment
 - d. That the appellant has come to equity with unclean hands(sic) being in rent arrears of nearly two years at Kshs 65,000/- per month
 - e. That the application is otherwise a gross abuse of the process

Directions

6. On the 23/1/25 directions were taken and parties elected to canvass the application by way of written submissions to be filed by 31/1/25. Both parties have filed their respective submissions which I have read and considered.

Determination

7. There are three issues for determination;
 - a. Whether the applicant is deserving of orders of leave to file the appeal out of time.
 - b. Whether orders of stay of execution of the judgment should be granted.
 - c. Costs of the application.
8. The relevant law in an application seeking leave to appeal out of time is anchored in the proviso of Section 79G of the CPA that; -
 - 79G. Time for filing appeals from subordinate Courts
Every appeal from a subordinate Court to the High Court shall be filed within a period of thirty days from the date of the decree or order appealed against, excluding from such period



any time which the lower Court may certify as having been requisite for the preparation and delivery to the appellant of a copy of the decree or order:

Provided that 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.

9. A reading of the above proviso indicates that such extension of time is premised on the discretionary powers of the Court. Section 95 CPA empowers the Court to enlarge such time as follows; -

95. Enlargement of time

Where any period is fixed or granted by the Court for the doing of any act prescribed or allowed by this Act, the Court may, in its discretion, from time to time, enlarge such period, even though the period originally fixed or granted may have expired.

10. Earlier on the Supreme Court devised principles to be considered in an application for extension of time in the case of *Nicholas Kiptoo Arap Korir Salat v Independent Electoral and Boundaries Commission & 7 others* [2014] eKLR as follows;

- “ 1. Extension of time is not a right of a party. It is an equitable remedy that is only available to a deserving party at the discretion of the Court;
2. A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the Court
3. Whether the Court should exercise the discretion to extend time, is a consideration to be made on a case to case basis;
4. Whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the Court;
5. Whether there will be any prejudice to be suffered by the respondents if the extension is granted;
6. Whether the application has been brought without undue delay; and
7. Whether in certain cases, like election petitions, public interest should be a consideration for extending time.” See also *Leo Sila Mutiso -vs- Rose Hellen Wangari Mwangi* [1999] 2 EA 231.

11. The Supreme Court in the case of *Nyamboki v Gathuru (Application 6 of 2019)* [2019] KESC 44 (KLR) held as follows in determining an application seeking such extension;

“, the Court has to consider whether the explanation given for any delay is reasonable and credible; whether there also exist extenuating circumstances to enable the Court exercise its unfettered jurisdiction; and that the delay, in any event, should not be so inordinate as to leave no doubt, that an applicant has been slothful, and filed such an application as an after-thought.”

12. In this case the judgement in the trial Court was rendered on 31/10/24 and according to the dictate of the law, any aggrieved party if so minded to file an appeal must do so within a period of thirty (30) days. An appeal in this matter ought to have been filed by 30/11/24. In this case the draft memorandum of appeal was only filed on 9/12/24. The reasons attributed to the delay in filing the appeal out of time is that the judgement of the Court was not uploaded in the CTS system. It was the applicant's case



that after waiting for the said impugned judgement to be uploaded in the CTS platform in vain, she visited the registry on the 14/11/24 where she was provided both with a hard and soft copy of the same albeit unsigned.

13. That notwithstanding the applicant has not explained why she did not file the appeal from 14/11/24 till the 30/11/24. The period of about two weeks has not been explained. It is trite that the flow of the Court's discretion is enabled by clear and credible explanation as to the reason for the delay. The applicant has not annexed any correspondence sent to the registry seeking a copy of the judgement. As it is the applicant has not satisfied the Court with a cogent explanation as to the delay.
14. It is trite that the Court has power to enlarge time but in the absence of reasonable explanation as to the delay, I find that the applicant is not deserving of this Courts exercise of discretion in her favour. Consequently, the application for orders of extension of time fails.
15. Having held as above I find no necessity to determine the issue of stay of execution of the judgement in any event.
16. Disposal orders
 - a. The application is unmerited. It is dismissed with costs to the respondent.
17. Orders accordingly

DELIVERED, DATED AND SIGNED AT NAIROBI THIS 13TH DAY OF FEBRUARY 2025 VIA MICROSOFT TEAMS.

J. G. KEMEI
JUDGE

