



**Kenya Airports Authority v Shabure & another (Miscellaneous Application
2 of 2023) [2025] KEELC 915 (KLR) (12 February 2025) (Ruling)**

Neutral citation: [2025] KEELC 915 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ISIOLO
MISCELLANEOUS APPLICATION 2 OF 2023
JO MBOYA, J
FEBRUARY 12, 2025**

BETWEEN

KENYA AIRPORTS AUTHORITY APPLICANT

AND

ALINOOR HAJI SHABURE 1ST RESPONDENT

ISIOLO COUNTY GOVERNMENT 2ND RESPONDENT

RULING

1. The Applicant herein has filed the Application and dated 21st December, 2023; and wherein the Applicant has sought for various reliefs/remedies, in particular, that the court be pleased to grant an order of stay of execution of the judgment and decree of the chief magistrate's court; and also to allow for the extension of time to file and serve an appeal out of time.
2. Upon being served with the application beforehand the 1st Respondent herein filed and served a Replying affidavit; and in respect of which the 1st Respondent has contended that the application herein has been filed and mounted with inordinate and unreasonable delay.
3. Additionally, it has been contended that the 1st Respondent whose land was compulsorily acquired has been subjected to great prejudice and injustice. Furthermore, it has been contended that the grant of an order of extension of time to file an appeal herein shall worsen and exacerbate the injustice being meted out on the 1st Respondent.
4. The application beforehand came up for hearing before Hon. Justice Muchoki Njoroge [now retired], whereupon the advocates agreed to canvass the application by way of written submissions. In this regard, the learned Judge proceeded to and indeed circumscribed the timelines for the filing and exchange of the written submissions.



5. Suffice it to state that the parties have since filed and exchanged the written submissions save for the 2nd Respondent herein. For good measures, the two [2] sets of the written submissions are on record and the same shall be considered by the court.
6. I have looked at and indeed examined the application before the court and the written submissions on record and I do wish to state that the determination of the application before the court turns on two [2] issues, namely; whether the court is seized with the required requisite jurisdiction to grant an order of stay of execution pending the hearing and determination of an appeal where no appeal has been filed or otherwise; and whether the Applicant herein is entitled to the extension of time to file and serve the appeal out of time.
7. I beg to start with the first issue and in this regard, I wish to state that an application for an order of stay of execution pending an appeal can only be filed in an existing appeal and once an appeal from the subordinate Court has been filed and or lodged in accordance with the provisions of the law.
8. Suffice to state that the only exception where an application for a stay of execution pending an appeal can be filed prior to and before an appeal is filed is where the applicant is seeking such an order pending an appeal to the court of appeal. In any event, the applicant in such a case must demonstrate that same has filed a Notice of appeal in accordance with the rules of the Court of Appeal.
9. For good measure, the Notice of Appeal once filed is deemed to constitute an appeal for purposes of the application for stay of execution. [see the provisions of Order 42 Rule 6 (4) of the [Civil Procedure Rules](#).
10. Be that as it may, it is not lost on the court that the intended appeal is one from the subordinate court and not from this court to the court of appeal. For coherence, it suffices to state that the provisions of Order 42 Rule 6 (4) of the [Civil Procedure Rules 2010](#), have no application to the matter before the court and hence the same are irrelevant and inapplicable.
11. Moreover, it is important to state that the provisions of Order 42 Rule 6 [1] of the [Civil Procedure Rules 2010](#); which found the basis for an order of stay of execution pending the hearing and determination of appeal presupposes the existence of an appeal or a second appeal as a basis for the issuance of an order of stay of execution of the decree subject to compliance with and satisfaction of the conditions highlighted under the provisions of Order 42 Rule 6 [2] of the [Civil Procedure Rules](#). [see the holding of the court in the case of [Kenya Shell Ltd vs Benjamin Kerage Kibiru and another](#) [1996] eKLR and [James Wangalwa vs Agnes Naliaka Cheseto](#) (2012) eKLR, respectively.
12. In respect of the instant matter, I wish to highlight that the application before the court has been mounted in the absence of an appeal and hence the same [application] has been filed in a vacuum. In the absence of an existing appeal and taking into account the circumstances highlighted in the case of [RWW vs EKW](#) [2019] eKLR and [Arun C. Sharma vs Raikundalia & Company Advocates](#) [2016] eKLR; the court is not disposed to grant an order of stay of execution of the judgment and the decree under reference.
13. Furthermore, it is not lost on the court that an order of stay of execution pending an appeal or intended appeal in the event of an appeal to the court of appeal, can only be granted once sufficient cause is shown/established. For coherence, an order of stay of execution like the one beforehand, does not issue for the mere asking of a party, the Applicant herein not excepted.
14. Next is the issue as to whether the applicant has established or laid before the court a basis [sufficient cause] to warrant the grant of an order for execution of time within which to file an appeal out of time.



15. I wish to state that the grant of an order for an extension of time is one founded on the exercise of discretion. In any event, it is common ground that the discretion of the Court in this regard, must be exercised judiciously, reasonably and objectively taking into account the competing interests and rights of both parties.
16. Simply put, the court must endeavor to strike a delicate balance between the provisions of Article 48 of the Constitution, 2010; on one hand and the provisions of Articles 10,27 and 159 (2) (b) of the Constitution 2010; on the other hand.
17. It is important to state that the applicant herein desires to prefer an appeal in pursuit of her undoubted rights of appeal, while the 1st Respondent seeks to appropriate and benefit from the fruits of the Judgment and decree of the court.
18. In the circumstances, the exercise of discretion must be judicious and objective. Furthermore, it is worthy to state that the guidelines that regulate the exercise of discretion to extend time have been elaborated upon by the Supreme Court of Kenya in various cases, *inter-alia* the case of Nicholas Kiptoo Korir Salat vs Independent and Electoral and Boundaries Commission and 6 others; Civil Application No. 16 of 2014 [2014] eKLR.
19. Moreover, the principles to be considered were also highlighted by the Supreme Court in the case of County Executive of Kisumu and others vs the County Government of Kisumu and others [2017] eKLR.
20. Furthermore, it is also worth to cite and reference that the decision of the Supreme Court in the case of Nairobi Bottlers Ltd vs Mark Ndumia Ndung'u (2023) KESC wherein the principles laid down in the case of Nicholas Kipkorir Arap Salat [*supra*] were reiterated and amplified.
21. Other than the decision of the Supreme Court [*supra*] the issues, ingredients and factors to be considered by the court while engaging with an application for an extension of time were also highlighted by the Court of Appeal in the case of Andrew Kiplagat Chemaringo vs Paul Kipkorir Kibet [2018] eKLR; Paul Musili Wambua vs Attorney General [2015] eKLR, Kimani vs Njoroge [2022] KECA and Postal Housing Cooperative Ltd vs The Ministry of Sports Culture and Social Services and Others (2024) KECA respectively.
22. The common [golden] thread that runs down all the decisions that have been cited and referenced above, is to the effect that the applicant was to isolate the period/duration of delays; account for the delays; give/proffer credible and plausible reasons for the delay; and finally, demonstrate the presence of sufficient cause [basis].
23. Furthermore, the cited decisions also underscore that an Applicant, must not be guilty of lethargy, negligence, indolence and/or slovenliness in his/her endeavor to approach the court. Simply put, the Applicant must approach the Court timeously upon discovery of the default and failure to act in accordance with stipulation[s] of the Law.
24. Taking the foregoing factors into account, it is now apposite to return to the instant matter and to discern whether the applicant has tendered and/or offered any plausible, cogent and/ or credible reason[s] for the delay prior and before the filing of the instant application or otherwise.
25. To start with, the applicant herein has not isolated the duration/ period of delay beforehand. Suffice it to state that the applicant has been evasive in ascertaining and speaking to the duration in question.
26. For clarity, the Judgment vide Isiolo CMC No. 12 of 2018; was delivered on the 24th May 2022, while the instant application was lodged in court on the 22nd February 2024. For coherence, same was lodged



- after 1 year and 8 months after the thirty (30) days to lodge an appeal pursuant to Section 79G of the Civil Procedure Act, Chapter 21, Laws of Kenya had lapsed.
27. Secondly, it is also evident that even when the applicant allegedly got to know of the existence of the Judgment and decree herein, same did not approach the jurisdiction of the court timeously and with due promptitude. For good measure, the duration taken before the applicant came to court speaks of indolence and slovenliness.
 28. Furthermore, it is also important to underscore that the applicant herein has also not proffered any reason why it [Applicant] did not follow up on the matter herein yet the applicant was herself a party. It is important to state that even where a party, [the Applicant not excepted] is represented by an advocate, the party is still obligated to exercise due diligence and to be proactive in following her/his matter. [see the holding in Habo Agencies Ltd vs Wilfred Odhaimbo Misingo {2015} eKLR.
 29. Finally, it is important to underscore that the 1st Respondent herein has indicated that the same shall be disposed to suffer prejudice and grave injustices if the orders herein are granted. In particular, the 1st Respondent has pointed out that his land was compulsorily acquired and despite the compulsory acquisition the same [1st Respondent] has not been compensated. In this regard, the 1st Respondent has posited that the grant of the orders sought shall subject him to further denial and or deprivation of the rights and benefit[s] under article 40 [3] of the Constitution 2010.
 30. I beg to state that the 1st Respondent just like the applicant is entitled to the cake of justice and furthermore, the protection vide Article 27 of the Constitution, 2010. Consequently, the court must not be over concerned with the undoubted rights of the applicant to appeal without due regard to the accrued rights of the 1st Respondent. [see the decision in the case of Machira vs the East African Standard Ltd [2002] eKLR.
 31. To my mind, the applicant herein has slept on her/his rights for too long and equity does not aid the indolent. Quite clearly, the Applicant herein does not deserve the intervention of Equity.
 32. Simply put, the application by and on behalf of the applicant is defeated by the doctrine of Laches. [see the decision of the Court of Appeal in the case of Chief Land Registrar and others vs Nathan Tirop Koech and others [2019] eKLR on the importance and tenor of the doctrine of laches.
 33. Finally, it is also worthy to point out that every person, the applicant not excepted, is called upon to approach the court without undue delay. In any event, Article 159 (2) (b) of the Constitution 2010; underpins the doctrine that justice delayed is justice denied. In this regard, I agree with Learned Counsel for the First Respondent that the prejudice to be suffered by the same outweighs the Interest[s] of the Applicant herein. [see the decisions of the court of appeal in the case of Said Sulleim Gheilton & another vs the Commissioner of Lands [sued through the Attorney General] [2015] eKLR.
 34. Consequently, and in the premises the application beforehand is devoid of merits and the same be and is hereby dismissed with costs to the 1st Respondent only.
 35. It is so ordered.

DATED SIGNED AND DELIVERED ON THE 12TH DAY OF FEBRUARY, 2025.

OGUTTU MBOYA

JUDGE.

In the presence of

Mr. Mutuma/Mustafa – Court Assistants



Mr. Kichwen Kemboi for the Applicant

Mr. Hassan Lakicha for the 1st Respondent

No appearance for the 2nd Respondent

