



**Aringo (Suing as the administrator of the Estate of Barnabas Aringo) v Ochieng & 2 others (Miscellaneous Civil Application E033 of 2024) [2025] KEELC 2960 (KLR) (27 March 2025) (Ruling)**

Neutral citation: [2025] KEELC 2960 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KISUMU  
MISCELLANEOUS CIVIL APPLICATION E033 OF 2024  
SO OKONG'O, J  
MARCH 27, 2025**

**BETWEEN**

**GRACE ARINGO ..... APPLICANT  
SUING AS THE ADMINISTRATOR OF THE ESTATE OF BARNABAS ARINGO**

**AND**

**JEREMIAH ADONGO OCHIENG ..... 1<sup>ST</sup> RESPONDENT  
JAMES OORO ABONGO ..... 2<sup>ND</sup> RESPONDENT  
THE LAND REGISTRAR ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

1. What is before me is the applicant’s Notice of Motion application dated 10<sup>th</sup> June 2024 in which the applicant has sought leave of the court to file an appeal out of time against the judgment of Hon. P. Koskey SPM delivered on 2<sup>nd</sup> March 2023 in Tamu PMC ELC No. E022 of 2021(hereinafter referred to as “the lower court suit”) and a stay of execution of the said judgment as concerns the costs awarded to the 1<sup>st</sup> respondent pending the filing, hearing, and determination of the intended appeal. The application was filed on 12<sup>th</sup> June 2024, more than one year after the delivery of the judgment sought to be appealed.
2. The application was brought on the grounds set out on the face thereof and on the supporting affidavit of the applicant sworn on 10<sup>th</sup> June 2024. The applicant averred that together with one Samuel Ayodo Aringo, she filed the lower court suit against the respondents. The applicant averred that the suit succeeded in part. The applicant averred that the claim against the 1<sup>st</sup> respondent was dismissed with costs. The applicant averred that she had been ailing and was not in court on the date of delivery of the said judgment. The applicant averred that she learnt of the judgment in May 2023 and was dissatisfied



- with the same. The applicant averred that she learnt at the same time that the 1<sup>st</sup> respondent's costs had been assessed and that the 1<sup>st</sup> respondent could execute the judgment at any time.
3. The applicant averred that due to her illness, she was unable to appeal against the lower court judgment within the 30 days provided by the rules. The applicant averred that the intended appeal raised triable issues which she should be allowed to ventilate.
  4. The application was opposed by the 1<sup>st</sup> respondent through a replying affidavit sworn on 21<sup>st</sup> August 2024. The 1<sup>st</sup> respondent averred that the applicant was present in court on 2<sup>nd</sup> March 2023 when the judgment of the lower court was delivered and was all along aware of the same. The 1<sup>st</sup> respondent averred that although the applicant claimed that she became aware of the lower court judgment in May 2023, the present application was not filed until 12 months later. The 1<sup>st</sup> respondent averred that the applicant did not intend to appeal against the lower court judgment and that she only thought of appealing after she learnt of the taxation of the 1<sup>st</sup> respondent's bill of costs. The 1<sup>st</sup> respondent averred that the applicant's application was brought 15 months after the judgment sought to be appealed. The 1<sup>st</sup> respondent averred that the delay in bringing the application was inordinate and was not explained. The 1<sup>st</sup> respondent averred that the applicant's suit in the lower court was not a public interest litigation and that the intended appeal raised no triable issue.
  5. The 2<sup>nd</sup> respondent opposed the application through a replying affidavit sworn on 19<sup>th</sup> September 2024. The 2<sup>nd</sup> respondent averred that the application was brought after an inordinate delay without reasonable explanation. The 2<sup>nd</sup> respondent averred that the applicant's failure to file the appeal within the prescribed time was caused by her negligence, and as such, her prayer for an extension of time should not be entertained by the court. The 2<sup>nd</sup> respondent averred that, in any event, the applicant's intended appeal had no prospects of success.
  6. The application was argued orally on 5<sup>th</sup> February 2025. I have considered the applicant's application together with the supporting affidavit. I have also considered the 1<sup>st</sup> and 2<sup>nd</sup> respondents' affidavits filed in opposition to the application. Finally, I have considered the submissions by the advocates for the parties. The applicant's application has two limbs. The first limb is seeking an extension of time within which to file an appeal against the decision of the lower court, while the second limb is seeking a stay of execution of the said decision pending the hearing of the intended appeal.
  7. Section 16A (1) of the *Environment and Land Court Act* 2011 provides that all appeals from subordinate courts and local tribunals shall be filed within 30 days from the date of the decree or order appealed against. Section 16A (2) of the said Act provides that:

“An appeal may be admitted out of time if the appellant satisfies the court that he had a good and sufficient cause for not filing the appeal in time.”
  8. Sufficient cause was defined in *Attorney General v. Law Society of Kenya & another* [2017]eKLR as follows:

“Sufficient cause or good cause in law means:  
...the burden placed on a litigant (usually by court rule or order) to show why a request should be granted or an action excused. See Black's Law Dictionary, 9th Edition, page 251.  
Sufficient cause must therefore be rational, plausible, logical, convincing, reasonable and truthful. It should not be an explanation that leaves doubts in a judge's mind. The explanation should not leave unexplained gaps in the sequence of events.”



9. This court's power to extend the time within which to file an appeal from a decision of the lower court is discretionary. A party approaching the court for an extension of time must demonstrate that he/she deserves the exercise of the court's discretion. The judgment sought to be appealed was delivered on 2<sup>nd</sup> March 2023. The appeal against the same should have been filed by 2<sup>nd</sup> April 2023. The present application was filed on 12<sup>th</sup> June 2024, after a lapse of almost 1 year and 2 months from the time when the applicant was supposed to file the appeal.
10. A delay of over 1 year to file an appeal or an application for extension of time to file an appeal is inordinate. From the material before me, I find no reasonable explanation for this delay. The applicant claimed that she was not present in court when the judgment was delivered. This cannot be true because a copy of the judgment annexed to the applicant's affidavit in support of the application shows that she was present when the judgment was delivered. There is no explanation why the lower court would have indicated that the applicant was present when the judgment was delivered while she was not. The applicant claimed that she learnt of the judgment in May 2023. As rightly pointed out by the 1<sup>st</sup> respondent, the present application was not brought until after 1 year from the time the applicant claimed to have learnt of the judgment. The applicant who claimed to have been sick produced no evidence showing that for over 1 year she was sick and unable to attend to her affairs. The letter from the Medical Superintendent of Muhoroni County Hospital dated 3<sup>rd</sup> June 2024 was written a few days before the present application was filed. The chances that the letter was written for the purposes of the application cannot be ruled out. The applicant's inordinate delay in the filing of the appeal and the application before the court has therefore not been explained. The possibility of the intended appeal being an afterthought, as alluded to by the 1<sup>st</sup> respondent, cannot be ruled out. Sufficient cause has, therefore not been shown why the applicant should be granted an extension of time to file the intended appeal. I, therefore, find no merit in that limb of the application.
11. The second limb of the application seeking a stay of execution was dependent on the outcome of the first limb that sought an extension of time within which to file an appeal against the lower court judgment. Having ruled that no sufficient cause has been shown to warrant the extension of time to appeal, the application for a stay of execution pending the hearing of the intended appeal equally fails since a stay of execution order cannot be made in a vacuum. Since the applicant has no appeal or an intended appeal, an order for a stay pending appeal is not available to her. The limb of the application seeking a stay of execution would not succeed even if it were considered on merit. Order 42 Rule 6 of the Civil Procedure Rules provides that an application for a stay of execution must be brought without unreasonable delay. The application before me was brought 1 year and 3 months after the judgment sought to be stayed. I have already found that such a delay was inordinate. The application would fail on that ground alone. It is not necessary to consider other conditions for granting a stay of execution.
12. In conclusion, the court finds no merit in the applicant's application dated 10<sup>th</sup> June 2024. The application is dismissed with costs to the 1<sup>st</sup> respondent.

**DELIVERED AND DATED AT KISUMU ON THIS 27<sup>TH</sup> DAY OF MARCH 2025**

**S. OKONG'O**

**JUDGE**

Ruling delivered virtually through Microsoft Teams Video Conferencing Platform in the presence of:

Mr. Tawo for the Applicants

Ms. Anuro for the 1<sup>st</sup> Respondent

N/A for the 2<sup>nd</sup> Respondent



Ms. J. Omondi-Court Assistant

