



REPUBLIC OF KENYA



**Mwangi v Gikonyo (Environment & Land Case E227 of 2021)  
[2025] KEELC 4533 (KLR) (27 March 2025) (Ruling)**

Neutral citation: [2025] KEELC 4533 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE E227 OF 2021**

**JG KEMEI, J  
MARCH 27, 2025**

**BETWEEN**

**GEORGE GIKONYO MWANGI ..... PLAINTIFF**

**AND**

**HANNAH WAMBUI GIKONYO ..... DEFENDANT**

*(In respect of the Plaintiff's application dated 13/1/2025)*

**RULING**

1. What is before the court for determination is the Plaintiff's Notice of Motion application dated 13/1/2025 principally seeking for Orders that:
  - a. This Hon Court be pleased to enlarge time for undertaking a valuation of the suit property for purposes of determination of the value and compensation due and payable to both parties.
  - b. The Plaintiff be and is hereby allowed to unilaterally proceed with the valuation and sale by public auction (through nominated registered valuer and auctioneer) of the suit property.
  - c. The costs of the application be awarded to the Plaintiff.
2. The application is supported by the Affidavit of George Gikonyo Mwangi, the Applicant herein, deponed on even date. The deponent avers that he and the Defendant are registered as absolute owners as tenants in common with equal undivided shares over the property known as Dagoretti/Kangemi/ S. 393, (the suit property herein). He avers that vide the Judgment delivered on 29/10/2024, the court found in his favour and held that;

“the Defendant had deprived him of his right to an equal undivided share in the whole of the suit property; and that the suit property be sold by public auction upon valuation by a professional valuer agreed upon by the parties or in case of a disagreement within 45 days



of the judgment, upon a joint valuation by two professional valuers each appointed and representing either party and the proceeds shared”.

3. The deponent avers that despite nominating and notifying the Defendant of his Valuer, the Defendant has deliberately refused to nominate her Valuer for a joint valuation as directed by the Court. That the 45 days granted by the court has since lapsed. It is for that reason that he seeks orders to unilaterally appoint a valuer so as to actualize the Judgment.
4. He contends that without a valuation of the suit property, compensation due and payable to both parties will not be determinable. That unless the orders sought are granted, he will continue to suffer irreparable harm as the Defendant continues to appropriate and utilize the rental income from the suit property to his total exclusion.
5. The Defendant opposed that application through her Replying Affidavit sworn on 28/1/2025. The Defendant avers that being aggrieved by the Court’s Judgment dated 29/10/2024, she has preferred an appeal at the Court of Appeal, which appeal and two applications are pending at the Appellate court. She denies depriving the Applicant his right to an equal and undivided share of the suit property. She avers that the Plaintiff has never been a tenant in common, which is an issue to be determined by the Appellate Court.
6. The Defendant contends that allowing the application sought herein will render the appeal nugatory and that she will be highly prejudiced. Regarding her failure to nominate a valuer, the Defendant avers that the same has been informed by the fact that she is challenging the Judgment in the Court of Appeal. That the Appellate Court is yet to issue a hearing date in respect of her applications.
7. The deponent deposes that it is in the interest of justice that the application be disallowed to allow parties to present their case before the appellate court. She argues that she has a meritorious appeal with high chances of success. She states that her application seeking stay orders pending appeal is pending before this Court. Consequently, the application lacks merit and ought to be dismissed with costs.
8. The Plaintiff filed a Further Affidavit sworn on 10/2/2025. He avers that the Defendant having admitted that she has deliberately refused to comply with the Judgment, it is evident that the Defendant is keen on frustrating the implementation of the Judgment of this Court. The Plaintiff deposes that the Defendant filed an application before the Court of Appeal being Civil Application No. E658 of 2024 seeking stay of execution. However, the Appellate Court declined to grant any interim stay of execution orders on 10/2/2025 for want of an appeal. Therefore, there are no stay orders barring the execution of the Judgment and/or orders emanating thereof.
9. The deponent further argues that there is no appeal pending before the Court of Appeal that is likely to be rendered nugatory. That there is no proper appeal pending. He states that what is pending before the Court of Appeal in Civil Application No. E003 of 2025 is an application seeking leave to file an appeal out of time. The Plaintiff argues that the mere filing of either an application for stay of execution or appeal at the Court of Appeal does not act as an automatic stay of execution of the Judgment of the Court.
10. On 13/2/25, the Court directed that the application be canvassed by way of written submissions. Parties complied. The Plaintiff’s submissions are dated 10/2/2025 whereas the Defendant’s submissions are dated 14/3/2025. I have had the opportunity to read through and considered the said submissions which now form part of the record of this court.



## Analysis and Determination

11. The Court has read and considered the instant Application, Affidavits and the annexures thereto as well as the rival submissions and finds that the issues for determination are;
  - a. Whether the application for extension of orders issued on 29/10/24 is merited for the court to exercise its discretion in favour of the Appellant/Applicant.
  - b. Whether the Plaintiff should be allowed to unilaterally proceed with the valuation and sale by public auction (through nominated registered valuer and auctioneer) of the suit property.

### **A. Whether the application for extension of orders issued on 29/10/2024 is merited for the court to exercise its discretion in favour of the Appellant/Applicant.**

12. Sections 3A and 95 both of the *Civil Procedure Act* are the operative parts in answering the question of whether the prayer to extend time is merited. The sections grant the courts unfettered discretion to enlarge time where a limited time has been fixed for doing any act or taking proceedings under these rules or by summary notice or by order of the court.
13. Section 95 of the said Act gives the court discretion to extend the time as it deems fit even if the time originally fixed has expired. The Section provides that: -

“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.”
14. The principles laid down by the Supreme Court in Nicholas Kiptoo Korir Arap Salat vs. IEBC & 7 Others [2014] eKLR are pertinent in this case; namely:

“The underlying principles a court should consider in exercise of such discretion include:

  1. Extension of time is not a right of any 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 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 suffered by the Respondent if the extension is granted;
  6. Whether the application has been brought without undue delay.
15. In the instant suit, Judgment was delivered on 29/10/2024 in favour of the Plaintiff. The court at Paragraph 77 and 78 directed interalia that:

“.... The suit property be sold by public auction upon valuation by a professional valuer agreed upon by the parties or in case of a disagreement, within 45 days of this Judgment upon a joint valuation by two professional valuers, each appointed and representing either



party and the proceeds shared equally in respect of the undeveloped land and in accordance to one's contribution in respect of the developments on the land.”

16. It is evident from the record that parties did not agree on the appointment of a joint valuer for the public auction to proceed. Therefore, the second part of the order came into play. Parties were granted 45 days within which they were to appoint two independent professional valuers to undertake a joint valuation for the public auction. The 45 days lapsed on or about 13/12/2024. The Plaintiff filed the current application on 13/1/2025. This is about thirty (30) days outside the time granted for the appointment of professional valuers.
17. The Plaintiff accuses the Defendant of frustrating the process as she continues to benefit from the rental income therefrom at his detriment. The Defendant's contention on the other hand is that she has preferred an appeal against the said Judgment, hence complying with the orders emanating from the Judgment will render her appeal nugatory.
18. It is trite law that an appeal does not operate as an automatic stay of execution. The conditions which a party must establish in order for the court to order stay of execution are provided for under Order 42 Rule 6(2) Civil Procedure Rules. Order 42 Rule 6 of the Civil Procedure Rules stipulates: -

“No appeal or second appeal shall operate as a stay of execution or proceedings under a decree or order appealed from except in so far as the court appealed from may order but the court appealed from may for sufficient cause order stay of execution of such decree or order and whether the application for such stay shall have been granted or refused by the court appealed from the court to which such appeal is preferred shall be at liberty on application being made to consider such application and to make such order thereon as may to it seem just and any person aggrieved by an order of stay made by the court from whose decision the Appeal is preferred may apply to the appellate court to have such orders set aside.”
19. The Defendant has not denied non-compliance with the Court orders. In the absence of stay of execution orders either from this court or the Court of Appeal, the Defendant is blatantly disobeying court orders. In any case, she is yet to file an appeal before the Court of Appeal that is likely to be rendered nugatory. She therefore lacks a justifiable reason not to comply.
20. It is my finding that the thirty (30) days cannot be termed as an inordinate delay. The reasons for the delay have been satisfactorily explained to the court as required by the law. Accordingly, it is my finding that the prayer for extension of time is merited.

**Whether the Plaintiff should be allowed to unilaterally proceed with the valuation and sale by public auction (through nominated registered valuer and auctioneer) of the suit property.**

21. The courts are now enjoined to give effect to the overriding objective in the exercise of its powers under the *Civil Procedure Act* or in the interpretation of any of its provisions.
22. Section 1A of the *Civil Procedure Act* provides that

“the Court shall, in the exercise of its powers under this Act or the interpretation of any of its provisions, seek to give effect to the overriding objective” while under section 1B some of the aims of the said objectives are; “the just determination of the proceedings; the efficient disposal of the business of the Court; the efficient use of the available judicial and administrative resources; and the timely disposal of the proceedings, and all other proceedings in the Court, at a cost affordable by the respective parties.”



23. Section 3A of the Civil Procedure Act on the other hand empowers it to make such orders as may be necessary for the ends of justice.
24. The Defendant having refused to comply with the court orders issued on 29/10/2024, and in the absence of a justifiable reason for non-compliance, the court has no reason in reviewing the said orders. Consequently, the Plaintiff is granted leave to unilaterally proceed with the valuation and sale by public auction (through nominated registered valuer and auctioneer) of the suit property.
23. Final orders for disposal
- a. This Hon Court be and hereby enlarges time for a period of 45 days for undertaking a joint valuation of the suit property for purposes of determination of the value and compensation due and payable to both parties.
  - b. In default of the above, the Plaintiff be and is hereby allowed to unilaterally proceed with the valuation and sale by public auction (through nominated registered valuer and auctioneer) of the suit property.
  - c. The costs of the application are in favour of the Plaintiff
25. Orders accordingly

**DELIVERED, DATED AND SIGNED AT NAIROBI THIS 27<sup>TH</sup> DAY OF MARCH 2025 VIA MICROSOFT TEAMS.**

**J. G. KEMEI**

**JUDGE**

In the presence of;-

Ochieng for the Plaintiff

Mr Kimani for the Defendant

C/A- Ms Yvette Njoroge

