



**Gicheha v Kangethe (Miscellaneous Civil Application E079 of 2024)
[2025] KEELC 3062 (KLR) (26 March 2025) (Ruling)**

Neutral citation: [2025] KEELC 3062 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
MISCELLANEOUS CIVIL APPLICATION E079 OF 2024**

**JM ONYANGO, J
MARCH 26, 2025**

BETWEEN

STEPHEN KARIUKI GICHEHA APPLICANT

AND

STEPHEN KARANJA KANGETHE RESPONDENT

RULING

1. The Applicant moved the court through a Notice of Motion dated 8th November 2024 seeking leave to appeal out of time against the judgment in Limuru SPMCC No. 41 of 2018 delivered on 21st November 2023. He also sought a temporary stay of execution of the judgment pending the hearing and determination of the intended appeal.
2. The application is anchored on the grounds set out on the face of the Notice of Motion and the Applicant's Supporting and Further Affidavits sworn on 8th November 2024 and 7th February 2025, respectively. In the said Affidavits the Applicant depones that he was not issued with a notice of delivery of judgment contrary to earlier court directions, hence he was not aware that judgment had been delivered. He only came to learn of the judgment on 29th April 2024 when he visited the Limuru Court Registry. He then instructed his advocates who applied for certified copies of proceedings, judgment and decree which they were yet to receive, at the time of filing this Application.
3. The Applicant contends that the intended appeal relates to his land where he has lived since 6th January 1967 and he is apprehensive that he might lose it if this application is not allowed. He further contends that the intended appeal raises serious and arguable issues with a high probability of success. He adds that he is ready to offer such security as will be determined by this court. He therefore prays that his application be granted given that it is in the interest of justice and the overriding objective of this court that this application be allowed as prayed.



4. The application is opposed by the Respondent through his Replying Affidavit sworn on 20th January 2025. In the said Affidavit he depones that the lower court in its judgment dated 21st November 2023 dismissed the counterclaim filed by the Applicant, and ordered the removal of the caution he had lodged. He further depones that the said caution has since been removed by the Land Registrar pursuant to the court's judgment. He is of the view that the Applicant has not given plausible reasons for the delay in filing this application for enlargement of time. He adds that the court published a notice on the Kenya Law platform for delivery of the judgment.
5. The Respondent contends that the Applicant has not shown any positive steps he took to check on the progress of the matter. He further contends that the grounds contained in the draft Memorandum of Appeal dated 8th November 2024 are not arguable and that the intended appeal has no chances of success.
6. The Respondent states that the Applicant's evidence at the lower court was that he last had possession of the suit property in the year 1982. The Respondent further states that he has been in exclusive possession of the suit property since 2015, therefore no prejudice is likely to be suffered by the Applicant if the orders sought are not granted. He adds that since there is no appeal to base this application upon, the Applicant's prayer for stay of execution of the impugned judgment is devoid of merit and the orders sought are incapable of being granted.
7. The Respondent depones has not offered any security he wishes to deposit in court. He adds that the Applicant is acting in bad faith because he seeks to further delay him from enjoying the fruits of the judgment. He urged the court to dismiss the application and award him costs.
8. The application was canvassed by way of written submissions. The Applicant filed written submissions dated 7th February 2025 through M/s Masara & Company Advocates while the Respondent filed written submissions dated 13th February 2025 through M/s Kinyua Mwaniki & Wainaina Advocates.

Issues for Determination

9. Having considered the application, the affidavits filed by both parties and the submissions filed by both parties, I find that the main issues for determination are:
 - i. Whether the Applicant should be granted leave to appeal out of time.
 - ii. Whether execution should be stayed pending appeal.

Analysis and Determination.

10. Section 79G of the *Civil Procedure Act* provides that:

“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.”



11. It is clear that the court has a wide discretion to extend time within which to file an appeal although the discretion must be exercised judiciously. In the case of the *County Executive of Kisumu v County Government of Kisumu and 8 Others* [2017] eKLR the Supreme Court of Kenya held as follows:

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“(23) It is trite law that in an application for extension of time, the whole period of delay should be declared and explained satisfactorily to the Court. Further, this Court has settled the principles that are to guide it in the exercise of its discretion to extend time in the Nicolas Salat case to which all the parties herein have relied upon. The Court delineated the following as the under-lying principles that a Court should consider in exercise of such discretion:

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;

- a. A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the court;
- b. Whether the court should exercise the discretion to extend time, is a consideration to be made on a case to case basis;
- c. Whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the Court;
- d. Whether there will be any prejudice suffered by the respondents if the extension is granted;
- e. Whether the application has been brought without undue delay; and
- f. Whether in certain cases, like election petitions, public interest should be a consideration for extending time.”

12. In the instant case the Applicant intends to appeal against the judgment of the trial court delivered on 21st November 2023. He has explained that he became aware that the said judgment had been delivered on 29th April 2024 when he visited the Limuru Court Registry to check on the status of the matter. The Applicant stated that he immediately instructed his advocates to file an appeal. His advocates wrote a letter dated 29th May 2024 seeking certified copies of the proceedings and the judgment which the Applicant contends they are yet to receive to date. It is not disputed that the lower court had informed the parties that the judgment would be delivered on notice, however, the Respondent contends that the said notice was published on the Kenya Law platform on 14th November 2023. This court will give the Applicant the benefit of the doubt and assume that he did not see the said notice.
13. Even though an explanation has not been given explaining why this application was brought over six months from the time the Applicant alleges he discovered the judgment had been rendered, the court will further give the Applicant the benefit of the doubt and assume the delay was caused by the unavailability of the certified copies of the judgment and proceedings.
14. The court takes note of the steps the Applicant took in visiting the court registry to enquire on the status of his suit and applying for certified copies of the proceedings and judgment. Therefore, this court finds that the Applicant is deserving of the exercise of the court’s discretion and grant him 14 days within which to file the appeal. Failure to which the order will stand automatically vacated.



15. Having granted the Applicant enlargement of time within which to file the appeal, it would have been prudent to also grant him a temporary stay of execution pending hearing and determination of the intended appeal. However, the Applicant has not attached a copy of the judgment or decree for the court to peruse and understand the scope of the judgment. Furthermore, from the parties' affidavit evidence, it emerges that the lower court had ordered the removal of the caution placed by the Applicant and that execution of the said order is already complete. This court can therefore not stay that order. The upshot is that the application partially succeeds. The Applicant is granted prayer (2) in his notice of motion application dated 8th November 2024. Each party shall bear their own costs.

DATED SIGNED AND DELIVERED VIRTUALLY AT THIKA THIS 26TH DAY OF MARCH 2025.

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J. M ONYANGO

JUDGE

In the presence of:

Ms Kerubo for Mr Wainaina for the Respondent

Mr Oyugi for Mr Masava for the Applicant

Court Assistant: Hinga

