



Njoroge & another v Maina & another (Suing as the legal representatives of the Estate of the Late Francis Mbarire Hungi - Deceased) (Miscellaneous Civil Application E001 of 2023) [2024] KEHC 13490 (KLR) (Civ) (28 October 2024) (Ruling)

Neutral citation: [2024] KEHC 13490 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYANDARUA
CIVIL
MISCELLANEOUS CIVIL APPLICATION E001 OF 2023
CM KARIUKI, J
OCTOBER 28, 2024**

BETWEEN

**JOSEPH GICHUKI NJOROGE 1ST APPELLANT
ISAAC MWANGI GACHURU 2ND APPELLANT**

AND

**CHARLES HUNGI MAINA & ESTHER WAMBUI MBARIRE (SUING AS
THE LEGAL REPRESENTATIVES OF THE ESTATE OF THE LATE FRANCIS
MBARIRE HUNGI - DECEASED) RESPONDENT**

RULING

1. The Applicant lodged an application dated 18/10/2023 seeking:
 - a. That the honorable court be pleased to enlarge the time within which the applicants may lodge their intended appeal against the judgment delivered on 24th August 2023 in Engineer CMCC No. 141 of 2022.
 - b. That the Honourable court be pleased to order a stay of execution of the judgment and decree delivered on 24th August 2023 in Engineer CMCC No. 141 of 2022 pending the hearing and determination of this application.
 - c. The costs of this application will be provided.
2. It was supported by the affidavit of Phyllis Mutua, sworn on 18/10/2023. It was opposed, and parties were directed to canvass it via submissions.
3. Applicant submissions



4. In submissions, it is contended that in the case *Edith Gichugu Koine vs. Stephen Njagi Thoithi* [2014] eKLR, the court held thus:

“Nevertheless, it ought to be guided by consideration of factors stated in many previous decisions of this Court including, but not limited to, the period of delay, the reasons for the delay, the degree of prejudice to the respondent if the application is granted, and whether the matter raises issues of public importance, amongst others...”

5. Factor as stated by the Learned Justices above.

The period of delay

6. Turning to the facts of this case, the Judgment of the subordinate court was delivered on 24th August 2023. It thus follows that the period of 30 days within which the Appellant was to appeal the decision of the subordinate court expired on 23rd September 2023.
7. The Application before this Court is dated 18th October 2023, which was brought 23 days after the expiry of the statutory period within which to lodge the intended Appeal. The delay is, therefore, not inordinate.

The reasons for the delay

8. The Claims Legal Assistant who was advised of the judgment herein drafted her (opinion on the terms of the judgment for approval by her superior, the Legal Manager.
9. However, she was unable to get instructions on the said opinion within the statutory period because the Legal Manager was out of the office attending to a medical emergency since the 7th September 2023 and only returned to the office on the 29th September, 2023. However, the Legal Manager did not fold his hands but proceeded to review the opinion on the judgment and issued instructions for the Appeal.
10. Consequently, instructions to file the Appeal were only issued to the Applicants' Advocates on 2nd October 2023.
11. From the above explanations it is clear that the Applicant's Advocates duly advised the Applicants' insurers of the delivery of the Judgment but the instructions to lodge an appeal against the Judgment only came on 2nd October 2023 (one week after the expiry of the statutory period) hence the delay in filing the intended appeal within the statutory period.
12. The Legal Manager's absence from 7th September 2023 to 29th September, 2023 also contributed to the delay in filing the intended appeal within the statutory period. We also submit that sickness cannot be foreseen and as such his absence was out of his control.
13. Urge the court not to visit the Insurer's absence on the applicants as the same was due to factors beyond his control and inadvertent. In this regard we are further guided by the following authority:
14. Odunga J. while handling the case of *Lucy Bosire v Kehancha Div. Land Dispute Tribunal & 2 others* [2013] eKLR quoted the case of *Branco Arabe Espanol vs. Bank of Uganda* [1999] 2 EA 22, Oder, JSC stated:

“The administration of justice should normally require that the substance of all disputes should be investigated and decided on their merits, and that errors, lapses should not necessarily debar a litigant from the pursuit of his rights and unless a lack of adherence to rules renders the appeal process difficult and inoperative, it would seem that the main



purpose of litigation, namely the hearing and determination of disputes, should be fostered rather than hindered”.

The arguability of the Appeal

15. While handling a similar Application in Samuel Mwaura Muthumbi v Josephine Wanjiru & Ngugi & another [2018] eKLR rendered himself on the issue of an arguable appeal thus:

“Lastly, looking at the Draft Memorandum of Appeal filed, I am unable to say that the intended appeal is in-arguable. Of course, all the Applicants have to show at this stage is arguability - not high Probability of success- At this point, the Applicant is not required to persuade the Appellate court that he intended or filed appeal has a high probability of success. All one is required to demonstrate is the arguability of the appeal: a demonstration that the Appellant has plausible and conceivably persuasive grounds of either facts or law to overturn the original verdict. The Applicants have easily met that standard. I believe that the Applicant has discharged this burden.”

16. Turning to the facts of this case, the Applicants have clearly set out the grounds of Appeal in the draft Memorandum of Appeal (refer to annexure JNN-4)

17. That from the grounds of Appeal stated in the draft Memorandum of Appeal, it is clear that the Applicants have plausible and conceivably persuasive grounds of both fact and law to overturn the original judgment of the subordinate court. We humbly submit that the Applicants have met this standard.

The degree of prejudice which could be suffered by the Respondents if the extension is granted

18. The Respondent does not stand to suffer any prejudice if the application is allowed since the effect of allowing the Application, is that the Applicants will be permitted to exercise a preciously cherished right of appeal, the respondents will have the right to respond to the said Appeal and if the same is found to be unmerited, then it will be disallowed hence no prejudice would be caused to the respondents effect of enlarging the time within which the Applicants may lodge their intended Appeal will be to permit the applicants to exercise their right of appeal against a judgment to which are dissatisfied. Allowing them to exercise this right would be a fair administration of justice as they will be given the opportunity to challenge the verdict of the subordinate court. On the other hand, disallowing the Applicants a chance to appeal the Judgment of the lower court would deny them their much-needed right to challenge a decision they are dissatisfied with.

19. Thus, the Court finds merit in enlarging the time within which the Applicant may lodge his intended appeal against the judgment delivered on 24th August 2023 in the subordinate court.

20. Prayer 4: It is urged, that this Honourable Court be pleased to order a stay of execution of the Decree issued in Engineer CMCC NO. 141 of 2022, pending the hearing and determination of the intended appeal.

21. Order 42 rule 6 (1) Civil Procedure Rules provides for stay pending appeal. Order 42 rule 6 (2) No order for stay of execution shall be made under sub-rule (1) unless

- a. the court is satisfied that substantial loss may result to the applicant unless the order is made and that the application has been made without unreasonable delay; and
- b. such security as the court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the applicant.



22. Form the above it is clear that the applicant needs to satisfy the court on the aforementioned conditions before they can be granted the stay orders. We will now consider whether these conditions have been met.

Substantial loss occurring

23. Gitari J. while handling *Kinyunjuri Muguta v Wotuku Muguta* [2018] eKLR rendered himself on issue of substantial loss thus:

“The onus of proving that substantial loss would occur unless stay is issued rests upon and must be discharged accordingly by the Applicant. It is not enough to merely state that loss will be suffered, the applicant ought to show the substantial loss that it will suffer in the vent the orders sought are not given.”

24. Turning to the facts of the present Application, there is no doubt that if a stay of execution is not granted, the Respondents can proceed with the decree's execution. In the circumstances, the Applicants would suffer a substantial loss as their property would be attached and sold in the realization of the decree, rendering the appeal, if successful, nugatory. Thus, loss ought to be prevented by this Honorable Court by preserving the status quo because the said loss would render the appeal nugatory.

Requisite security

25. In the course of pendency of the instant appilcaion,the court granted orders of interim stay of execution. Thus the court is urged to grant a stay of execution pending the hearing of the intended appeal on the strength of the security that has already been deposited in court, which shows good faith to cushion the Respondents in the unlikely event the Applicants' appeal is not successful. Thus court finds merit on the ground on security deposited.
26. On Whether the Application has been made without undue delay? The judgment of the subordinate court was delivered on 24th August, 2023 and the application before you was filed on 18th October, 2023.The delay in filing the present Application was occasioned by the fact that the Claims Legal Assistant was unable to get instructions from her superior on her opinion on the Judgment terms within the statutory period because the Legal Manager was out of the office attending to a medical emergency since 7th September 2023 and only returned to the office on the 29th September 2023.
27. Consequently, instructions to file the Appeal were only issued to the Applicants' Advocates on 2nd October 2023.This reliance is made on the case of *Kinyunjuri Muguta v Wotuku Muguta* [2018] eKLR where it held: "Judgment was delivered on 31/05/2017, and the appellant filed the application and Notice of Appeal on 19/07/2017, a period of about one and a half months later; therefore, there was no delay from the appellant."
28. Respondent submissions
29. The Respondent brought the suit herein seeking compensation from the Applicants for the fatal injuries sustained by the late Francis Mbarire as a result of a Road Traffic Accident which occurred on 28th April 2022, the matter came up for hearing on diverse dates' and on 24th August, 2032, the Honourable.
30. Applicants failed to satisfy the judgment and instead filed the present application in this Honourable court seeking stay of execution and extension of time within which to file the appeal. The Respondent filed a replying affidavit in response to the application and parties were directed to file submissions. The respondent submission hereunder: -



Whether the Applicants can be granted an order for stay of execution.

31. The Respondent will submit under the following limbs on whether the applicants have met the conditions requisite for granting stay of execution.

Whether the Applicant will suffer any loss if the Application herein is not allowed

32. Order 42 rule 6 (2) (a) clearly states that: -

“No order for stay of execution shall be made under sub rule (1) unless the court is satisfied that substantial loss may result to the applicant unless the order is made and that the application has been made without unreasonable delay.”

33. Applicants have indicated in their Application that they will suffer loss if their Application is not allowed but they have not established the same.
34. The Respondent has a valid judgment and is yet to enjoy the fruits of his judgment while on the other hand, the Applicants have been enjoying stay of execution at the detriment of the Respondent which is just a way of frustrating the Respondent from enjoying the fruits of his judgment which he is rightfully entitled to. There is also no justifiable reason given why the Respondent should not enjoy the fruits of his judgment.
35. The court relied on the case of Machira T/A Machira & Co Advocates vs. East African Standard (No 2) [2002] KLR 63 where it was held that:

“to be obsessed with the protection of an appellant or intending appellant in total disregard or fitting mention of the so far successful opposite party is to flirt with one party as crocodile tears are shed for the other, contrary to sound principle for the exercise of a judicial discretion. The ordinary principle is that a successful party is entitled to the fruits of his judgement or of any decision of the court giving him success at any stage. That is trite knowledge and is one of the fundamental procedural values which is acknowledged and normally must be put into effect by the way applications for stay of further proceedings or execution, pending appeal are handled. In the application of that ordinary principle, the court must have its sight firmly fixed on upholding the overriding objective of the rules of procedure for handling civil cases in courts, which is to do justice in accordance with the law and to prevent abuse of the process of the court.”

36. The Applicants have failed to prove that they will suffer any loss if the order for stay of execution is not granted and therefore their application ought to be dismissed with costs to the Respondent and further that the Respondent be allowed to proceed with execution process unless the entire claim is settled.

Whether the Defendant/applicants have given any security

37. According to the Application filed by the Applicants, they have not provided any security or shown willingness to provide the same.
38. In the case of Luxus Woods (K) Limited v Patrick Amugune Kamadi [2016] eKLR the Applicant had not specified the amount they were willing to deposit as security and that was one of the Honourable



Court's reasons for dismissing the Application. The court in the above authority referred to the case of Equity Bank Limited Vs Taiga Adams Company Limited (2006) and proceeded to state as follows; -

“...of even greater impact is the fact that an applicant has not offered security at all and this is one of the mandatory tenets under which the application is brought.... Let me conclude by stressing that all the four, not one or some, must be met before this court can grant an order of stay....” which principle was also emphasized in Carter & Sons Limited Vs Deposit Protection Fund Board & 3 Others, CA Nairobi 291/1997.”

39. In the abovementioned authority and in its conclusion, the Honourable Court held that:

“In the upshot, I find that the Application dated 23rd November, 2015 is not merited and the same is dismissed with costs to the Respondent.”

40. It is therefore our submission that the Application herein is unmerited as the same does not satisfy the requirements of Order 42 rule 6. We therefore pray that this application be dismissed with costs to the Respondent.

Whether the Applicants are Entitled to an Order for Extension of Time to file the Appeal.

41. In the case of Ruth Shikanda (Suing as Legal REPR. on Behalf the Estate of Agnes Ayori Ashiemi (Dcd) V Sibed Transport Company Ltd [2020] eKLR, the court cited the case of Thuita Mwangi Vs Kenya Airways Ltd it was held:

“It is well settled that the decision whether or not to extend time for appealing is essentially discretionary. It is also well settled that in general the matters which this court takes into account in deciding whether to grant an extension of time are: first; the length of the delay; secondly; the reason for delay; and thirdly; (possibly) the chances of the appeal succeeding if the applicant is granted. ”

42. The Supreme Court of Kenya in Nicholas Kiptoo Arap Korir Salat Vs IEBC & Others [2014] eKLR stated:

- i. 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;
- ii. A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the court;
- iii. Whether the court should exercise discretion to extend, it a consideration made on a case to case basis;
- iv. Whether there is a reasonable reason for the delay, the delay should be explained to the satisfaction of the court;
- v. Whether there will be any prejudice suffered by the Respondent if the extension is granted;
- vi. Whether the application has been brought without undue delay; and

Whether the delay to file the appeal was inordinate

43. The judgment was issued in the presence of both parties on 24th August, 2023 and all parties were aware of the terms of the judgment.



44. The Applicants in their application claim that the failure to file the appeal on time was due to the mistake on the part of the Applicants' insurer who sent the instructions to lodge an appeal after the statutory period has lapsed.
45. This reason is not sufficient to have the orders sought granted. The fact Applicants were well aware of the terms of the judgment and deliberately ailed to act upon the same within the required time. They slept on their right and cannot cry foul right now. It is the Respondent's submissions that equity does not aid indolent litigant.
46. The Applicants also indicate that the legal officer who was attending to the matter could not get instructions from her manager who was out of office for a medical emergency. This is hard to believe as there was no form of communication that was made to this effect that was presented before court and thus all these remain to be mere allegations.
47. The Applicants are guilty of lethargy, inertia and indolence and they must therefore face the consequences for the same.
48. It is therefore the Respondent's submission that the reasons advanced by the Applicants for the delay in filing the appeal are not sufficient to warrant granting of the orders sought. The Respondent further submits that equity does not aid an indolent litigant and therefore pray that the application herein be found to lack merit and the same be dismissed with costs.

Whether the appeal has any chances of success

49. The intended appeal is on quantum.
50. Looking at the trial court's award on quantum, the same if proper and the court did not take into account anything it ought not to have taken into consideration in making its findings and therefore there will be no reason for the appellate court to interfere with he finds of the trial court.
51. It is therefore submitted that court will have no reason to Interfere with the award given by the trial court and that the appeal lacks merit and has no chances of success. Therefore, the application should be dismissed with costs to the Respondent and allow the Respondent to proceed to enjoy the fruits of his judgment.

Issues, Analysis And The Determination

52. After going through the record, pleadings, and submissions, I find the issues are basically whether the applications for leave to appeal out of time and stay of execution are merited. What is the order as to costs?
53. On the application for an extension of time to appeal, in the case Edith Gichugu Koine vs. Stephen Njagi Thoithi [2014] eKLR, the court held thus:

“Nevertheless, it ought to be guided by consideration of factors stated in many previous decisions of this Court including, but not limited to, the period of delay, the reasons for the delay, the degree of prejudice to the respondent if the application is granted, and whether the matter raises issues of public importance, amongst others...”
54. On the element of delay in filing an instant application of the facts of this case, demonstrate that the Judgment of the subordinate court was delivered on 24th August 2023. It thus follows that the period



of 30 days within which the Appellant was to appeal the decision of the subordinate court expired on 23rd September 2023.

55. The Application before this Court is dated 18th October 2023, which was brought 23 days after the expiry of the statutory period within which to lodge the intended Appeal. The delay is, therefore, not inordinate.
56. The justification for the delay is anchored on the fact that the Claims Legal Assistant, who was advised of the judgment herein, drafted her (opinion on the terms of the judgment for approval by her superior, the Legal Manager.
57. However, she was unable to get instructions on the said opinion within the statutory period because the Legal Manager had been out of the office attending to a medical emergency since September 7, 2023, and only returned to the office on September 29, 2023. However, the Legal Manager did not fold his hands; instead, he proceeded to review the opinion on the judgment and issued instructions for the Appeal.
58. Consequently, instructions to file the Appeal were only issued to the Applicants' Advocates on 2nd October 2023
59. From the above explanations, it is clear that the Applicant's Advocates duly advised the Applicants' insurers of the delivery of the Judgment, but the instructions to appeal against the Judgment only came on 2nd October 2023 (one week after the expiry of the statutory period) hence the delay in filing the intended appeal within the statutory period.
60. The Legal Manager's absence from 7 September 2023 to 29 September 2023 also contributed to the delay in filing the intended appeal within the statutory period. It is urged that, the sickness cannot be foreseen, and as such, his absence was out of his control.
61. Thus, the court can not visit the Insurer's absence on the applicants as the same was due to factors beyond his control and inadvertent. See the case of *Lucy Bosire v Kehancha Div. Land Dispute Tribunal & 2 others* [2013] eKLR quoted the case of *Branco Arabe Espanol vs. Bank of Uganda* [1999] 2 EA 22, Oder, JSC stated: where it was held;

“The administration of justice should normally require that the substance of all disputes should be investigated and decided on their merits and that errors, lapses should not necessarily debar a litigant from the pursuit of his rights and unless a lack of adherence to rules renders the appeal process difficult and inoperative, it would seem that the main purpose of litigation, namely the hearing and determination of disputes, should be fostered rather than hindered.”
62. Turning to the facts of this case, the Applicants have clearly set out the grounds of Appeal in the draft Memorandum of Appeal (refer to annexure JNN-4). From the grounds of Appeal stated in the draft Memorandum of Appeal, it is clear that the Applicants have plausible and conceivably persuasive grounds of both fact and law to overturn the original judgment of the subordinate court. We humbly submit that the Applicants have met this standard. See *Samuel Mwaura Muthumbi v Josephine Wanjiru & Ngugi & another* [2018] eKLR
63. The Respondent does not stand to suffer any prejudice if the application is allowed since the effect of enabling the Application is that the Applicants will be permitted to exercise a precious right of appeal, the respondents will have the right to respond to the said Appeal, and if the same is found to be unmerited, then it will be disallowed hence no prejudice would be caused to the respondents.



- e. The effect of enlarging the time within which the Applicants may lodge their intended Appeal will be to permit the applicants to exercise their right of appeal against a judgment to which they are dissatisfied. Allowing them to exercise this right would be a fair administration of justice as they will be given the opportunity to challenge the verdict of the subordinate court. On the other hand, is disallowing the Applicants a chance to appeal the Judgment of the lower court, would deny them their much needed right to challenge a decision they are dissatisfied with.
64. On stay pending appeal, ie, Prayer 4: That this Honourable Court be pleased to order a stay of execution of the Decree issued in Engineer CMCC No. 141 of 2022 pending the hearing and determination of the intended appeal.
65. Order 42 rule 6 (1) Civil Procedure Rules provides for stay pending appeal. Order 42 rule 6 (2) No order for stay of execution shall be made under sub-rule (1) unless
- c. the court is satisfied that substantial loss may result to the applicant unless the order is made and that the application has been made without unreasonable delay; and
 - d. such security as the court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the applicant.
66. From the above it is clear that the applicant needs to satisfy the court on the aforementioned conditions before they can be granted the stay orders. We will now consider whether these conditions have been met.

Substantial loss occurring

67. Gitari J. while handling *Kinyunjuri Muguta v Wotuku Muguta* [2018] eKLR rendered himself on issue of substantial loss thus:
- “The onus of proving that substantial loss would occur unless stay is issued rests upon and must be discharged accordingly by the Applicant. It is not enough to merely state that loss will be suffered, the applicant ought to show the substantial loss that it will suffer in the event the orders sought are not given.”
68. Turning to the facts of the present Application, we submit that if stay of execution is not granted the Respondents can proceed with the execution of the decree. In the circumstances, the Applicants would suffer substantial loss as their property would be attached and sold in realization of the decree rendering the appeal, if successful nugatory.
69. Thus, submit that the aforementioned loss ought to be prevented by this Honorable Court by preserving the status quo because the said loss would render the appeal nugatory.

Requisite security

70. The Applicants have so far complied with court orders for grant of interim stay of execution. That the court be pleased to grant stay of execution pending the hearing of the intended appeal on the strength of the security which has already been deposited in court which shows good faith to cushion the Respondents in the unlikely event the Applicants' appeal is not successful.
71. Whether the Application has been made without undue delay?



72. The judgment of the subordinate court was delivered on 24th August, 2023 and the application before you was filed on 18th October, 2023.
73. The delay in filing the present Application was occasioned by the fact that the Claims Legal Assistant was unable to get instructions from her superior on her opinion on the Judgment terms within the statutory period because the Legal Manager was out of the office attending to a medical emergency since 7th September 2023 and only returned to the office on the 29th September, 2023.
74. Consequently, instructions to file the Appeal were only issued to the Applicants' Advocates on 2nd October 2023.
75. Gitari J while handling *Kinyunjuri Muguta v Wotuku Muguta* [2018] eKLR rendered himself thus on the issue of undue delay:
- “Judgment was delivered on 31/05/2017 and the appellant filed the application and Notice of Appeal on 19/07/2017 a period of about one and a half month later therefore there was no delay from the appellant.”
76. Turning to the facts of this case, the Applicants have clearly set out the grounds of Appeal in the draft Memorandum of Appeal (refer to annexure JNN-4)
77. That from the grounds of Appeal stated in the draft Memorandum of Appeal, it is clear that the Applicants have plausible and conceivably persuasive grounds of both fact and law of overturn the original judgment of the subordinate court. We humbly submit that the Applicants have met this standard.

The degree of prejudice which could be suffered by the Respondents is the extension is granted

78. The Respondent does not stand to suffer any prejudice if the application is allowed since the effect of allowing the Application, is that the Applicants will be permitted to exercise a preciously cherished right of appeal, the respondents will have the right to respond to the said Appeal and if the same is found to be unmerited, then it will be disallowed hence no prejudice would be caused to the respondents effect of enlarging the time within which the Applicants may lodge their intended Appeal will be to permit the applicants to exercise their right of appeal against a judgment to which are dissatisfied. Allowing them to exercise this right would be a fair administration of justice as they will be given the opportunity to challenge the verdict of the subordinate court. On the other hand, disallowing the Applicants a chance to appeal the Judgment of the lower court would deny them their much-needed right to challenge a decision they are dissatisfied with.
79. Thus, the Court finds merit in enlarging the time within which the Applicant may lodge his intended appeal against the judgment delivered on 24th August 2023 in the subordinate court.
80. Prayer 4: It is urged, That this Honourable Court be pleased to order a stay of execution of the Decree issued in Engineer CMCC NO. 141 of 2022, pending the hearing and determination of the intended appeal.
81. Order 42 rule 6 (1) Civil Procedure Rules provides for stay pending appeal. Order 42 rule 6 (2) No order for stay of execution shall be made under sub-rule (1) unless
- e. the court is satisfied that substantial loss may result to the applicant unless the order is made and that the application has been made without unreasonable delay; and



- f. such security as the court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the applicant.
82. Form the above it is clear that the applicant needs to satisfy the court on the aforementioned conditions before they can be granted the stay orders. On substantial loss occurring, Gitari J. while handling *Kinyunjuri Muguta v Wotuku Muguta* [2018] eKLR rendered herself on issue of substantial loss thus:
- “The onus of proving that substantial loss would occur unless stay is issued rests upon and must be discharged accordingly by the Applicant. It is not enough to merely state that loss will be suffered, the applicant ought to show the substantial loss that it will suffer in the vent the orders sought are not given.”
83. Turning to the facts of the present Application, there is no doubt that if a stay of execution is not granted, the Respondents can proceed with the decree's execution. In the circumstances, the Applicants would suffer a substantial loss as their property would be attached and sold in the realization of the decree, rendering the appeal, if successful, nugatory. Thus, loss ought to be prevented by this Honorable Court by preserving the status quo because the said loss would render the appeal nugatory.

On the element of Requisite security;

84. In the course of the pendency of the instant application, the court granted orders of interim stay of execution. Thus, the court finds merit in granting a stay of execution pending the hearing of the intended appeal on the strength of the security that has already been deposited in court, which shows good faith to cushion the Respondents in the unlikely event the Applicants' appeal is not successful.
85. On Whether the Application has been made without undue delay? The judgment of the subordinate court was delivered on 24th August, 2023 and the application before you was filed on 18th October, 2023. The delay in filing the present Application was occasioned by the fact that the Claims Legal Assistant was unable to get instructions from her superior on her opinion on the Judgment terms within the statutory period because the Legal Manager was out of the office attending to a medical emergency since 7th September 2023 and only returned to the office on the 29th September 2023.
86. Consequently, instructions to file the Appeal were only issued to the Applicants' Advocates on 2nd October 2023. This court rely on the case of *Kinyunjuri Muguta v Wotuku Muguta* [2018] eKLR where it held: "Judgment was delivered on 31/05/2017, and the appellant filed the application and Notice of Appeal on 19/07/2017, a period of about one and a half months later; therefore, there was no delay from the appellant."
87. Thus I find the delay excusable.
88. The upshot is that the court makes orders that;
- i. The applicant will file and serve an appeal within 14 days from the dates herein.
 - ii. The deposit in court will be security for the appeal herein till the conclusion of the appeal or any further order of the court.
 - iii. In default of the above (i), the appeal to stand dismissed.

RULING, DATED, SIGNED, AND DELIVERED AT NYANDARUA THIS 28TH DAY OF OCTOBER 2024

CHARLES KARIUKI



JUDGE

