



REPUBLIC OF KENYA



**KENYA LAW**  
THE NATIONAL COUNCIL FOR LAW REPORTING  
Where Legal Information is Public Knowledge

**Kimani & another v Matinde (Civil Appeal E578 of 2023)  
[2023] KEHC 26825 (KLR) (Civ) (22 December 2023) (Ruling)**

Neutral citation: [2023] KEHC 26825 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CIVIL  
CIVIL APPEAL E578 OF 2023**

**AN ONGERI, J**

**DECEMBER 22, 2023**

**BETWEEN**

**MOSES KINUTHIA KIMANI ..... 1<sup>ST</sup> APPELLANT**

**MUNIA AHMED BASBASS ..... 2<sup>ND</sup> APPELLANT**

**AND**

**MAKONGO WILLIAM MATINDE ..... RESPONDENT**

**RULING**

1. The application dated 30/6/2023 is brought under Order 42 rule 6(1), (2), Order 50 Rule 2, Order 50 rule 6, Order 51 rule 1 of the *Civil Procedure Rules* 2010, Section 79G of the *Civil Procedure Act*, Section 1A, 1B and 3A of the Civil Procedure Rules and all other enabling provisions of the law.
2. The applicant is seeking the following orders;
  - i. The application be certified as urgent and service thereof be dispensed with and the same be heard ex-parte in the first instance.
  - ii. This honourable court be pleased to grant stay of execution pending the hearing and determination of this application.
  - iii. This honourable court be pleased to grant leave to the appellants to file an appeal out of time against the judgment in Milimani CMCC E133389 of 2021.
  - iv. This honourable court be pleased to enlarge time and grant the appeal preferred from the judgment in Milimani CMCC E133389 of 2021, being filed after the lapse of the statutory period as fully and properly filed and served within the prescribed timelines.



- v. This honourable court be pleased to grant the applicant stay of execution pending the hearing and determination of the preferred appeal.
  - vi. That the costs of and incidental to this application abide the result of the said application.
  - vii. That costs of the application be provided for.
3. The application is based on the following grounds;
- i. The judgment in Milimani CMCC E133389 of 2021 s delivered on the 26<sup>th</sup> MAY 2023 BY Hon. Rawlings Liluma, Senior Resident Magistrate.
  - ii. The applicants have since been seized of inconsistencies with regard to the evidence produced by and admitted by the respondent/decree holder in Miliman CMCC E133389 of 2021 and consequently, being aggrieved by the said judgment, the applicant intending to appeal the entire judgment, wrote to the Registrar of the Chief Magistrates at Milimani on the 26<sup>th</sup> June 2023 requesting for proceedings.
  - iii. The appellants/applicants have since filed a memorandum of appeal in the appeal preferred against the plaintiff/respondent as provided by Section 79G of the Civil Procedure Act, which appeal is meritorious and has a good chance of success.
  - iv. The time allowed to file an appeal has run out thereby necessitating the instant application seeking inter alia stay of execution pending hearing and determination of this application, leave to appeal and further have the preferred appeal admitted out of time with stay of execution of the decree in Milimani CMCC E133389 of 2021 issued pending appeal;
  - v. The appellants/applicants are ready and willing to comply with the directions of the court so issued including directions on security for costs.
  - vi. The delay herein is not so inordinate or so great as to be inexcusable.
  - vii. It is in the interest of even handed justice and equity that the instant application be allowed.
  - viii. Unless the court herein issues the orders sought herein, the respondent is set to proceed with execution of decree against the appellants/applicants, and thereby render the appeal preferred by the appellants/applicants nugatory.
  - ix. The respondent herein will not be prejudiced should the application herein be allowed as prayed.
  - x. The defendants/applicants therefore pray that the orders sought herein be allowed as prayed with costs in the case.
4. The respondents did not file any submissions as directed by the court.
5. I find that the application dated 30/6/2023 is not opposed and the same is allowed as prayed.
6. Stay of execution pending appeal is granted on condition that the entire decretal sum is deposited in court within 45 days of this date.
7. The appellant to file the appeal within 30 days of this date.
8. The appeal to be prosecuted within 90 days of this date.
9. The costs of this application to abide the appeal.



**DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS  
22<sup>ND</sup> DAY OF DECEMBER, 2023.**

**A. N. ONGERI**

**JUDGE**

