



**PKK v CK (Miscellaneous Application E028 of 2025)
[2025] KEELC 5161 (KLR) (9 July 2025) (Ruling)**

Neutral citation: [2025] KEELC 5161 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
MISCELLANEOUS APPLICATION E028 OF 2025**

SM GITHINJI, J

JULY 9, 2025

BETWEEN

PKK APPELLANT

AND

CK RESPONDENT

RULING

1. For determination is the Notice of Motion dated 8/4/2025 pursuant to Order 42 Rule 6 & Order 51 of the civil procedure Rules, Sections 1, 1A, 3 & 3A of the Civil Procedure Act seeking that:
 1. Spent
 2. The honourable court be pleased to stay execution of the ruling delivered on 23rd January, 2025 by Hon. Elizabeth K. Chesoni (R. M) in MCCHCC E004/2024 and proceedings in Maua Children Case number E004/2024 pending the hearing and determination of the application herein.
 3. The honourable court be pleased to stay execution of the ruling delivered on 23rd January, 2025 by Hon. Elizabeth K. Chesoni (R. M) in MCCHCC E004/2024 and proceedings in Maua Children Case number E004/2024 pending the hearing and determination of the intended appeal herein.
 4. Leave be granted to file an appeal out of time.
 5. The annexed memorandum of appeal be deemed as duly filed.
 6. Any other orders as this Honorable court may deem fit to grant.
2. The grounds upon which the application is premised are set out in the body of the application and supporting affidavit of the Applicant sworn on even date. He averred that immediately after being



served with the pleadings in this matter, he fell ill but still optimistically engaged the Respondent with the hope of settling this matter out of court, which negotiations bore no fruits. The trial court condemned him unheard to pay Ksh. 15,000 without reviewing his income, and it is imperative that the said decision is stayed so that his intended appeal, which has high chances of success, is not rendered nugatory. The delay was occasioned by factors beyond his control and specifically the negotiations undertaken towards settling the matter out of court. The Respondent changed schools for the minors upon their separation in a bid to financially overburden him, which school fees he has dutifully continued to pay. He occasionally buys clothing and shopping for the minors and has provided a medical cover for them, yet the Respondent, who is gainfully employed enjoys all her earning in alcohol.

3. The Respondent swore a replying affidavit on 17/4/2025 in opposition to the application. She deposed that the Applicant is a teacher in addition to being a business man with rental houses in Makiri area generating approximately Ksh. 50,000 monthly and a miraa plantation of 4 hectares at Kimongoro generating Ksh. 100,000 monthly. According to her, the application is misconceived, incurably defective, bad in law, incompetent, vexatious, an afterthought and an abuse of the court process solely intended to delay execution. The Applicant has not been paying school fees as he contends and he is seeking to derive an advantage from his own wrongs by asking the court to protect him from the consequences of his own default.
4. The Applicant swore a further supporting affidavit on 20/6/2025 in support of his application.

Determination

5. The singular issue for determination is whether the orders sought should be granted.
6. The underlying principles that a court should consider in the exercise of its discretion to extend time were underscored by the Supreme Court in *Nicholas Kiptoo Korir Arap Salt v Independent Electoral & Boundaries Commission & 7 others* (2014) eKLR, as follows;
 - “ 1. 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; 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 on 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 respondents if the extension is granted; 6. Whether the application has been brought without undue delay; and 7. Whether in certain cases, like election petitions, public interest should be a consideration for extending time.”
7. The instant application was filed on 8/4/2025 while the impugning ruling was delivered on 23/1/2025. The delay in filing the application is attributable to the Applicant’s illness and the negotiations between the parties to settle the matter out of court. The Applicant was indeed admitted at Clin-Eve Hospital, Maua on 5/2/2025 and discharged on 27/3/2025 as evidenced by the exhibited Discharge Summary from the said hospital. I find that although the Applicant has inordinately delayed in filing this application, the reasons proffered for the delay are plausible and excusable.
8. It is clear from the grounds of appeal raised in the annexed memorandum of appeal, challenging inter alia the trial court’s maintenance order of Ksh. 15,000 without affording the Applicant an opportunity to be heard, that the appeal is indeed arguable.



9. The Respondent has not disclosed any prejudice which she will suffer if leave to appeal out of time is granted, and I thus deem it fit to grant the extension sought.
10. On stay of execution, Order 42 Rule 6 (2) of the Civil Procedure Rules provides as follows;

“No order for stay of execution shall be made under subrule (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.”
11. I am guided by the holding of the Court of Appeal in *Butt v Rent Restriction Tribunal* [1979] eKLR that;

“It is in the discretion of the court to grant or refuse a stay but what has to be judged in every case is whether there are or not particular circumstances in the case to make an order staying execution. It has been said that the court as a general rule ought to exercise its best discretion in a way so as not to prevent the appeal, if successful from being nugatory, per Brett, LJ in *Wilson v Church* (No 2) 12 Ch D (1879) 454 at p 459.”
12. As noted above, the unreasonable delay in filing this application has been sufficiently explained to the satisfaction of the court. I find that unless the stay sought is granted, the Applicant will suffer substantially by being condemned unheard to pay a monthly maintenance sum of Ksh. 15,000. On the flipside, I note that the interests of the minors herein are of paramount importance and they must be utterly safeguarded, regardless of the acrimony between their parents.
13. I have delicately balanced the minors’ rights to education, medical care, clothing, shelter and food against the Applicant’s undoubted right to appeal. In my considered view, unconditionally staying the trial court’s ruling as sought by the Applicant would be tantamount to denying the minors herein their aforementioned basic needs.
14. In dealing with stay of execution in children matters, the court (William Musyoka J) in *Z M O v E I M* [2013] eKLR, espoused that;

“As a matter of principle, grant of stay of execution of maintenance orders in children's cases should be made in very rare cases. I say so because parents have a statutory and mandatory duty to provide for the upkeep of their minor children. There are no two ways about. Suspension of a maintenance order is not in the best interests of the child, particularly in cases such as this one, where paternity is not in dispute. To my mind once a maintenance order is made where parentage is undisputed it should not be suspended pending appeal, where the appeal is on the quantum payable. The solution ideally lies in expediting the disposal of the appeal and staying the matter before the Children’s Court to wait the outcome of the appeal. Tinkering with the quantum at this stage would amount to determining the appeal before arguments are heard from both sides on the merits of the same.”
15. I have not lost sight of the fact that the Applicant’s undoubted right to appeal must not trample upon the minors’ paramount interests to provision.



16. I find that it is in the best interests of the minors herein that the Applicant continues to remit the monthly maintenance sum of Ksh. 15,000 for their upkeep pending the hearing and determination of the appeal.
17. In the end, I find that the application dated 8/4/2025 is merited and it is allowed in the following terms;
1. The Applicant is granted leave to appeal out of time.
 2. The draft memorandum of appeal shall be deemed as duly filed upon payment of the requisite fees.
 3. Stay of execution of the ruling delivered on 23rd January, 2025 by Hon. Elizabeth K. Chesoni (R. M) in MCCHCC E004/2024 and proceedings in Maua Children Case number E004/2024, is hereby granted, pending the hearing and determination of the intended appeal herein, on condition that;
 - i. The Applicant shall continue to pay school fees for the minors when and if they fall due.
 - ii. The Applicant shall continue to remit the monthly sum of Ksh. 15,000 for the maintenance of the minors herein pending the hearing and determination of the appeal.
 - iii. The Record of Appeal shall be filed and served within 30 days from the date herein.
 - iv. In default of any of the aforementioned conditions, the stay hereinabove granted shall lapse and the Appeal shall stand as dismissed.

DATED AND DELIVERED AT MERU THIS 9TH JULY, 2025.

S.M. GITHINJI

JUDGE

Appearances:-

Miss Asuma holding brief for Mr. Mutembei for the Applicant.

Miss Catherine Kinya for the Respondent.

