



REPUBLIC OF KENYA



**KENYA LAW**  
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**Ongeta v Abudo (Civil Appeal E858 of 2023)  
[2025] KEHC 2723 (KLR) (Civ) (12 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 2723 (KLR)

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

**CIVIL**

**CIVIL APPEAL E858 OF 2023**

**AC MRIMA, J**

**MARCH 12, 2025**

**BETWEEN**

**JARED JUMA ONGETA ..... APPLICANT**

**AND**

**GODANA GUYO ABUDO ..... RESPONDENT**

**RULING**

1. The Appellant/Applicant herein, Jared Juma Ongeta, filed an application by way of a Notice of Motion dated 20<sup>th</sup> October 2025 pursuant to Order 22 Rule 22 and Order 51 Rule 1 of the Civil Procedure Rules wherein the Applicant principally sought for orders suspending the warrants of arrest against him dated 5<sup>th</sup> March 2024 and a stay of execution of the decree pending the hearing of the appeal.
2. The genesis of the application was that the Applicant was aggrieved by the judgment rendered in Nairobi Small Claims Court Case No. E637 of 2023 on 23<sup>rd</sup> March, 2023 and the subsequent decree of Kshs. 364,764/93 in favour of the Respondent. The Applicant swore an Affidavit in support of the application in which he expounded on the grounds which are the basis of the application. The Applicant also challenged the manner in which the Respondent previously attached his movable properties and sold them without disclosing how much the items were sold at. To his utter shock and surprise, the Respondent again taken out warrants of arrest against him and he was served on the 8<sup>th</sup> of October 2024.
3. The Applicant is, hence, apprehensive that if no stay orders are granted, then he stands to be incarcerated despite the pending appeal and the fact that his properties were attached and sold in secrecy. To that end, the Applicant contended that he stands to suffer irreparable loss and made a passionate plea for the orders.



4. The Respondent on the other hand opposed the application through a Replying Affidavit he swore on 30<sup>th</sup> October 2024. He deposed that the appeal was unmeritorious having been filed out of time and that the Applicant has been evading all efforts to execute the decree and that he hid his motor vehicle and other office goods after proclamation leaving behind some few office items worth not in excess of Kshs. 15,000/= which were subsequently attached and sold by public auction.
5. The application was disbursed by way of written submissions where both parties duly complied and urged this Court to find in favour of their rival positions.
6. The principles upon which a Court exercises discretion under Order 42 Rule 6 of the Civil Procedure Rules are firmly settled. The Court ought to consider the following conditions: -
  1. That the application is filed without undue delay.
  2. That the Applicant demonstrates substantial loss unless stay orders are granted.
  3. That the Applicant is ready to give security for due performance of the decree or order as may ultimately be binding on him at the end of the determination of the appeal.
7. In Supreme Court of Kenya Civil Application No. 16 of 2014, Nicholas Kiptoo Arap Korir Salat -vs- Independent Electoral and Boundaries Commission & 7 others [2014] eKLR, the Apex Court had the following to say when it considered an application for extension of time on the aspect of delay: -
 

... it is clear that the discretion to extend time is indeed unfettered. It is incumbent upon the applicant to explain the reasons for delay in making the application for extension and whether there are any extenuating circumstances that can enable the Court to exercise its discretion in favour of the applicant.

... we derive the following as the underlying principles that a Court should consider in exercising such discretion:

  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 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. Where there is a reasonable [cause] for the delay, [the same should be expressed] to the satisfaction of the Court;
  5. Whether there will be any prejudice suffered by the respondents, if 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 [emphasis supplied]
8. Returning to the matter at hand, judgment in the trial Court was delivered on 23<sup>rd</sup> March 2023 and the Memorandum of appeal filed on 28<sup>th</sup> August 2023. The Applicant then filed an application by way of Notice of Motion dated 7<sup>th</sup> September 2023 for extension of time which is still pending. He had earlier on filed a Notice of Motion dated 28<sup>th</sup> August 2021 (sic) seeking to stay execution and lifting of



warrants of attachment and sale. The Applicant then filed the instant application where a stay of the execution of the warrant of arrest was granted on 22<sup>nd</sup> October 2024 by Hon. Ouya Tabitha, J.

9. Courts have always frowned against parties using the judicial process to defeat ends of justice. Delay has been captured as one of the ways errantly used in achieving this end and that is why Article 10(2)(b) of *the Constitution* had to elevate equity to a constitutional imperative. Since 2010, the maxims of equity are constitutional values such that, for instance, whoever is guilty of laches is not in consonance with *the Constitution*. (See the Court of Appeal in *Willy Kimutai Kitilit v Michael Kibet* [2018] eKLR).
10. A careful consideration of the record reveals a coordinated and well-choreographed scheme by the Applicant to delay this matter for the longest period possible. I say so because the Applicant has not been keen on prosecuting the various applications he filed and keeps on filing subsequent applications. No wonder the Applicant has been enjoying stay orders since 2023. This is a matter in which the Applicant is guilty of laches.
11. Having found that the Applicant has not satisfactorily explained the delay, the issue of him suffering any loss given the pending appeal dimly arises since the appeal was filed way out of time and no extension of time has since been granted and that the Respondent has been anxiously seeking to execute a judgment since 2023 without success. Further, the Applicant has not made any proposal on the security for costs.
12. This is a matter in which the Applicant ought to be least aided. This Court would have outrightly dismissed the instant application, but since the Applicant has a pending application to extend time and if successful he will have to prosecute his appeal, this Court will reluctantly so, and in the unique circumstances of this case, consider granting conditional stay orders.
13. In the end, the following orders do hereby issue: -
  - a. There be a stay of the execution of the judgment and decree [including the warrants of arrest in force against the Applicant herein] in Nairobi Small Claims Court Case No. E637 of 2023 pending further orders of this Court on condition that the Applicant deposits the sum of Kshs. 300,000/= [Three Hundred Thousand Only] in Court within 14 days of today.
  - b. In the event the Applicant defaults in (a) above, the Notice of Motion dated 20th October 2024 shall stand dismissed with costs assessed at Kshs. 20,000/= (Twenty Thousand Only) and the Respondent shall be at liberty to execute the decree.
  - c. Further orders on a date to issue.

Orders accordingly.

**DELIVERED, DATED AND SIGNED AT NAIROBI THIS 12<sup>TH</sup> DAY OF MARCH, 2025.**

**A. C. MRIMA**

**JUDGE**

Ruling No. 1 virtually delivered in the presence of:

Mr. Obare, Learned Counsel for the Applicant/Appellant.

Mr. Anyonje, Learned Counsel for the Respondent.

Michael – Court Assistant.

