



REPUBLIC OF KENYA



**Muchoki & another v Elevator World Limited & another (Civil Case E226 of 2025) [2025] KEHC 6052 (KLR) (8 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 6052 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
CIVIL CASE E226 OF 2025**

**TW CHERERE, J**

**APRIL 8, 2025**

**BETWEEN**

**EDWARD COMBA MUCHOKI ..... 1<sup>ST</sup> APPLICANT**

**SAMUEL KANGETHE MUIRURI ..... 2<sup>ND</sup> APPLICANT**

**AND**

**ELEVATOR WORLD LIMITED ..... 1<sup>ST</sup> RESPONDENT**

**U & I DEPOSIT TAKING MICROFINANCE LTD ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. The Appellants have approached this Court by way of a Notice of Motion dated 21st February 2025 seeking the following orders:
  1. Leave to appeal out of time against the judgment in Milimani SCC No. E2538 of 2024
  2. A stay of execution of the said judgment pending the hearing and determination of the intended appeal.
2. The judgment in question was delivered on 16<sup>th</sup> August 2024, in which the trial court ordered the Appellants to pay the 1<sup>st</sup> Respondent KES. 517,684 together with costs and interest.
3. The application is supported by the affidavit of Maureen Moranga, Advocate for the Appellants, sworn on 21<sup>st</sup> February 2025. The Appellants contend, among other grounds, that:
  1. They are aggrieved by the judgment;
  2. Their goods have since been proclaimed;
  3. The 1st Respondent may be unable to refund the decretal sum in the event the appeal succeeds.



4. The application is opposed. The 1<sup>st</sup> Respondent filed a replying affidavit sworn on 25<sup>th</sup> March 2025 by their counsel Joseph N. Ngigi, who avers that:
  1. The Appellants offered to settle the decretal sum and, by a ruling of 11<sup>th</sup> November 2024, were granted time to pay by 11<sup>th</sup> December 2024;
  2. The Appellants failed to honour their proposal and took no steps for over six months from the date of judgment;
  3. The goods of the Appellants have already been proclaimed, and auctioneer costs incurred;
  4. The application is brought in bad faith to delay execution and deny the Respondent the fruits of judgment
  5. From the affidavit evidence on record, the issues for determination are:
    1. Whether the Appellants have demonstrated sufficient cause to warrant leave to appeal out of time;
    2. Whether they are entitled to an order of stay of execution pending appeal.

## **Analysis and Determination**

### **1. Leave to Appeal Out of Time**

6. Section 79G of the *Civil Procedure Act* requires that appeals from the subordinate courts be filed within 30 days of the decree or order appealed from. The Court may, however, extend time where sufficient cause is shown.
6. The judgment was delivered on 16<sup>th</sup> August 2024. The present application was filed on 21<sup>st</sup> February 2025, more than six months later. No plausible or satisfactory explanation has been given for this delay. The only justification offered relates to the proclamation of goods and a general grievance with the judgment neither of which explains the long lapse of time before seeking leave.
6. In *Leo Sila Mutiso v Rose Hellen Wangari Mwangi* [1999] 2 EA 231, the Court of Appeal held:

“It is now well settled that the decision whether or not to extend time... is discretionary and requires consideration of the length of the delay, the reason for the delay, the chances of the appeal succeeding and the degree of prejudice to the respondent.”
6. The unexplained delay in this matter is inordinate, and there is clear evidence that the Appellants were granted time to settle by the trial court, which they ignored. Their conduct does not meet the threshold of diligence or good faith required to invoke the Court’s discretion.

### **1. Stay of Execution**

6. The principles governing stay pending appeal are found in Order 42 Rule 6(2) of the Civil Procedure Rules, which require the applicant to demonstrate:
  1. Substantial loss may occur unless the stay is granted;
  2. The application was made without unreasonable delay; and
  3. That security will be provided for the due performance of the decree.



11. The Appellants have not addressed the issue of delay satisfactorily. The application was made several months after judgment, after the trial court granted indulgence to settle.
11. The 1<sup>st</sup> Respondent's assertion that the Appellants offered to settle the decretal sum by 11<sup>th</sup> December 2024, but failed to do so, has not been controverted. The Court is therefore entitled to treat this claim as admitted.
11. The Appellants' conduct, in the Court's view, amounts to abuse of the court process and a calculated effort to buy time.
11. In *Republic v Kenya Anti-Corruption Commission & 2 others* [2009] KLR 31, it was held:

“The Court's discretion is not to be exercised whimsically or capriciously, but judiciously and on the basis of evidence and sound legal principles. The Court must discourage abuse of its process.”
11. Similarly, in *Utalii Transport Company Limited & 3 others v NIC Bank & Anor* [2014] eKLR, the court observed:

“Lack of candour, indolence and failure to act in good faith are grounds upon which the court may decline to exercise its discretion.”
11. From the foregoing analysis, the court finds that the application is brought after inordinate and unexplained delay. The Appellants' offer to settle the decretal sum, and the trial court's indulgence, clearly show that the Appellants were not serious about pursuing an appeal until execution had commenced. This Court finds that the application is an abuse of the process, intended merely to buy time and frustrate execution.

### **Disposition**

11. Accordingly, the Notice of Motion dated 21<sup>st</sup> February 2025 is without merit and it is ordered:
  1. Leave to appeal out of time is declined
  2. The prayer for stay of execution of the said judgment pending the hearing and determination of the intended appeal is equally declined.
  3. Applicant shall bear the Respondent's costs of the application

**DELIVERED AT NAIROBI THIS 08<sup>RD</sup> DAY OF APRIL 2025**

**WAMAE.T. W. CHERERE**

**JUDGE**

Appearances

Court Assistant - Ubah

For Applicant - Ms. Ndisya for Kimondo Gachoka & Co. Advocates

For Respondent - Mr. Kinoti for Joe Ngigi & Co. Advocates

