



**Ngaari v Kimani (Civil Miscellaneous Application E125 of 2024)
[2025] KEHC 4651 (KLR) (10 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 4651 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CIVIL MISCELLANEOUS APPLICATION E125 OF 2024
BK NJOROGE, J
APRIL 10, 2025**

BETWEEN

JACKSON MWANGI NGAARI JUDGMENT DEBTOR

AND

KARANJA BETHWEL KIMANI DECREE HOLDER

RULING

1. This is a Ruling in respect of the Judgement Debtor/Applicant's application under a Certificate of Urgency by way of a Notice of Motion dated 12th August, 2024. It is supported by the Affidavit of a cousin to the applicant, Peter Karima Kanagi sworn on 12th August, 2024 with annextures. It seeks the following orders;
 - a.spent.
 - b. That pending hearing and determination of this application the Honourable Court be pleased to issue a stay of the warrants of arrest orders dated 6th June, 2024.
 - c. That the Judgement Debtor/Applicant be granted leave to file an Appeal out of time against the Subordinate Court orders dated 6th June, 2024.
 - d. That the Court be pleased to issue a stay of the orders dated 6th June, 2024 warranting the Applicant's arrest and committal to civil jail pending the hearing and determination of the Appeal challenging the said orders.
 - e. That this Honourable Court be pleased to issue any other order it deems fit.
 - f. That parties bear their own costs of the application.
2. The application is opposed by the Decree holder/Respondent Karanja Bethwel Kimani through a Replying Affidavit sworn on 4th October, 2024 with annextures.



3. Directions were given that the Application be canvassed by way of written submissions. The Court has seen and read the Applicant's written submissions dated 4th December, 2024. The Court has equally seen and read the Respondent's written submissions dated 19th November, 2024.

Issues for Determination

4. The Court frames two issues for determination, arising out of the application;
 - a. Whether leave to appeal out of time should be granted.
 - b. Whether a stay of execution pending appeal should be granted.

Analysis

5. The Court is called upon to exercise its discretionary powers to extend time for filing an appeal and also stay execution, pending the intended appeal.
6. Section 79 G of the [Civil Procedure Act](#) provides the time for filing an appeal to this court at thirty (30) days. It states as follows;
7. The leading decision on the legal principles applicable in applications for extension of time is the Supreme Court of Kenya decision in [Nicholas Kiptoo Korir Arap Salat v IEBC and 7 others](#) [2014] eKLR. It states as follows;

“ 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; A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the court Whether the court should exercise the discretion to extend time, is a consideration to be made on a case to case basis; Whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the Court; Whether there will be any prejudice suffered by the respondents if the extension is granted; Whether the application has been brought without undue delay; and whether in certain cases, like election petitions, public interest should be a consideration for extending time.”
8. A decree has been passed against the Applicant by the Small Claims Court at Thika in SCCOM E600 of 2022. *Karanja Bethwel Kimani v Jackson Mwangi Ngaari*. This was in respect of a friendly loan of Ksh.1,000,000/= made to the Applicant by the Respondent. The Applicant repaid a sum of Ksh.120,000/- leaving a balance of Ksh.880,000/-. That amount remains unpaid since 2020.
9. The Respondent filed proceedings before the Small Claims Court in Thika, to which the Applicant did not enter an appearance or file a defence. The Learned Adjudicator entered judgement for the Respondent herein for Ksh.880,000/- plus costs and interest on 6th October, 2022.
10. The Applicant does not intend to Appeal against the decree of the Small Claims Court, rather it is against the order made on 6th June, 2024. The Order directed for issuance of warrants of arrest and his subsequent committal to civil jail.
11. He pleads that the delay in filing the appeal was a period of 43 days which is not inordinate.
12. The Respondent as can be expected is peeved by the Applicant's action. He complains that this is yet another delaying tactic. That the Applicant has no intentions of settling the debt or any part of the thereof.



13. The main question the Court asks itself is whether a period of 43 days is inordinate for failure to file an Appeal. The Court answers this question in the negative.
14. Looking at all the circumstances of this case and that the Applicant was eventually arrested and committed to civil jail, the delay is not inordinate.
15. The leave sought is granted. For purposes of expediting time the Court will attach some conditions. Appeals from the Small Claims Court are heard expeditiously.
16. The Courts no longer insist on typing of proceedings of the Small Claims Court. So long as the Record of Appeal is complete and the lower Court file available, the Court would ordinarily give directions for disposal of the Appeal. More so if the proceedings of the Learned Adjudicator are legible and clear.
17. This is the only way the Courts can keep the spirit behind the Small Claims Court alive. Appeals to this Court can no longer be used to park disputes which were resolved expeditiously before the Small Claims Court.

b) Whether a Stay of Execution Pending Appeal Should be Granted.

18. Order 42 Rule 6 of the *Civil Procedure Rules* provides as follows;
 6. Stay in case of appeal [Order 42, rule 6.]
 - (1) No appeal or second appeal shall operate as a stay of execution or proceedings under a decree or order appealed from except in so far as the court appealed from may order but, the court appealed from may for sufficient cause order stay of execution of such decree or order, and whether the application for such stay shall have been granted or refused by the court appealed from, the court to which such appeal is preferred shall be at liberty, on application being made, to consider such application and to make such order thereon as may to it seem just, and any person aggrieved by an order of stay made by the court from whose decision the appeal is preferred may apply to the appellate court to have such order set aside.
 - (2) 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.
 - (3) Notwithstanding anything contained in subrule (2), the court shall have power, without formal application made, to order upon such terms as it may deem fit a stay of execution pending the hearing of a formal application.
 - (4) For the purposes of this rule an appeal to the Court of Appeal shall be deemed to have been filed when under the Rules of that Court notice of appeal has been given.
 - (5) An application for stay of execution may be made informally immediately following the delivery of judgment or ruling.
 - (6) Notwithstanding anything contained in subrule (1) of this rule the High Court shall have power in the exercise of its appellate jurisdiction to grant a temporary injunction



on such terms as it thinks just provided the procedure for instituting an appeal from a subordinate court or tribunal has been complied with.

19. In the case of *Mugab v Kunga* [1988] KECA 28 (KLR) the Court considered what would be crucial when considering an application for a stay of execution pending an appeal.

“For the parties to come to this court, the court is to consider whether the status quo should be maintained pending the hearing of the appeal failing which the appeal if successful will be rendered nugatory. This approach was laid down in *Butt v Rent Restriction Tribunal*, Civil Appeal NAI 6 of 1979, which practice has been followed ever since. The courts’ view is that status quo should be maintained until the appeal is heard and determined”.

20. The Court has to balance between the rights of the Respondent to access and enjoy the fruits of his judgement as against the Debtor’s right to ventilate his Appeal.
21. At hand is the issue of personal liberty. If the Debtor is arrested and committed to civil jail once again, the right he is seeking to ventilate may be lost. Personal liberty once taken away may not be regained.
22. Having said so, it also puzzles the court why a Debtor who was accorded a friendly loan appears very disinterested in repaying the amount. He complains that the Decree holder should use other means, but not commit him to civil jail. It is not clear which other mean of recovery of debt that the Debtor refers to. The Court has a wide discretion in granting the orders for stay and also issuing orders for furnishing of security for the due performance of the decree. A party cannot walk into Court and submit that I can’t pay and would pay the debt, but give me a stay a stay of execution.
23. The Court will issue a stay of execution subject to the Applicant depositing a sum of Ksh.100,000/- into Court by 10th May, 2025. Thereafter, the Applicant will deposit a further sum of Ksh.10,000/- on each subsequent month with effect from 10th June, 2025 until the Appeal is heard and determined. The amount will be held by the Court as security for the appeal, pending the outcome of the intended appeal.
24. As to costs, the same are to abide the outcome of the Appeal.

Determination

25. The Applicant’s application by way of a Notice of Motion dated 12th August, 2024 is allowed in the following terms;
- a. The Judgment Debtor/Applicant is granted leave to file an Appeal out of time against the subordinate Court orders dated 6th June, 2024.
 - b. The Memorandum of Appeal is to be filed and served within seven (7) days from the date of this Ruling.
 - c. The Record of Appeal be filed and served within thirty (30) days after the date of filing the Record of Appeal.
 - d. In default of compliance with the timelines set out in (b) and (c) above, the leave granted shall be vacated and the Appeal be struck out with costs.
 - e. There be a stay of execution of the Orders dated 6/6/2024 warranting the Applicant’s arrest and committal to civil jail pending the hearing and determination of the Appeal challenging the said orders. This is on condition that the Judgement Debtor/Applicant does deposit in Court a sum of Kshs.100,000/- on or before 10/05/2025. Thereafter, the Applicant to deposit



a sum of Kshs.10,000/- into Court with effect from 10/06/2025 and thereafter on every 10th day of each succeeding month until the Appeal is heard and determined. The Amount is to be held by the Court as security, pending the outcome of the Appeal.

- f. In default of compliance with order (e) on the due date or any other subsequent dates, the order of stay of execution granted herein shall lapse and or stand vacated forthwith and the Respondent may be at liberty to proceed to execute the orders of 6th June, 2024.

26. The costs of this application do abide the outcome of the intended Appeal.

27. It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 10TH DAY OF APRIL, 2025

NJOROGE BENJAMIN K

JUDGE

In the presence of;

Mr. Kimutai holding brief for Mr. Kago for the Judgement Debtor/Applicant

Miss Wachira holding brief for Mr. Kanyi for the Decree Holder /Respondent

Mr. Luyai – Court Assistant

