



**Corporate Insurance Company Limited v Wanjiru (Civil Appeal
E308 of 2025) [2025] KEHC 12227 (KLR) (22 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 12227 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CIVIL APPEAL E308 OF 2025
TW CHERERE, J
MAY 22, 2025**

BETWEEN
CORPORATE INSURANCE COMPANY LIMITED APPLICANT
AND
ANTONY KURIA WANJIRU RESPONDENT

RULING

“Discretion to extend time or halt execution is not automatic—it must be earned through prompt action and sufficient cause.”

1. By a Notice of Motion dated 13th March 2025, the Appellant seeks the following orders:
 1. Leave to appeal the judgment delivered on 04th July 2024 in SCCCOMM E286 of 2024 out of time.
 2. Setting aside of the judgment.
 3. Lifting of any warrants of attachment of property and proclamation of attachment issued herein.
 4. Costs of the application.
2. The application was supported by the affidavit sworn on 13th March 2025 by Ann Odongo, the Applicant’s Legal Manager, and is premised on the grounds that warrants of attachment have been issued, and that the Applicant is willing to abide by any conditions the court might impose as a condition for stay of execution
3. The Respondent, despite being served, did not file a response nor attend court.
4. From the affidavit on record, the issues arising for determination are:



1. Whether leave to appeal out of time should be granted;
2. Whether warrants of attachment of property and proclamation of attachment ought to be lifted
5. The power of the court to grant an extension of time is derived from Section 3A of the *Civil Procedure Act*, which provides for the overriding objective of the Act, and Section 63(e), which empowers the court to extend time. Order 50 Rule 6 of the Civil Procedure Rules also provides for the enlargement of time.
6. The principles guiding the court in the exercise of its discretion to extend time are well-established. The court exercises its discretion judiciously, and not as a matter of right. The Applicant bears the burden of demonstrating sufficient cause for the delay.
7. In *Fakir Mohamed v. Trust Bank Ltd*, Civil Appeal No. 32 of 2005, the Court of Appeal reiterated these principles, emphasizing that the court should consider whether the applicant has presented an explanation that shows a non-frivolous reason for the delay.
8. The principles governing extension of time were also discussed by the Supreme Court in *Nicholas Kiptoo Arap Korir Salat v Independent Electoral and Boundaries Commission & 7 Others* [2014] eKLR, where it was stated:

“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 extension of time must explain the delay to the satisfaction of the Court.”
9. The case of *George Kagwima Kariuki & 2 Others v George M. Gichimu & 2 Others* [2014] eKLR, emphasized that evidence is the “key that unlocks the flow of judicial discretion,” and a party who fails to provide sufficient evidence cannot expect the Court to exercise its discretion in their favour.
10. In the present application, the judgment sought to be appealed was delivered on 04th July 2024. The application for extension of time was filed on 13th March 2025, approximately eight months later.
11. The Applicant’s supporting affidavit, sworn by Ann Odongo, does not offer any explanation for the inordinate delay in filing the appeal. It merely states that warrants of attachment have been issued.
12. The Applicant has not demonstrated that the application was brought promptly or that there exists any justifiable reason for the delay in approaching the court. The delay appears reactive rather than justified, and no basis has been laid to warrant the exercise of this Court’s discretion in the Applicant’s favour.
13. An application for the lifting of warrants of attachment and proclamation is in the nature of application for stay execution and the applicable principles are similar to those under Order 42 Rule 6(2) of the Civil Procedure Rules, which provides that:

“No order for stay of execution shall be made unless 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 such security as the court orders for the due performance of such decree or order as may ultimately be binding on the applicant has been given.”
14. Substantial loss refers to a real and demonstrable risk that cannot be compensated by damages. In *Benjoh Amalgamated Limited & another v Kenya Commercial Bank Limited* [2014] KECA 872



(KLR), the Court of Appeal underscored that the applicant must establish substantial loss and promptitude.

15. The Applicant only moved to court after the warrants of attachment and proclamation had already been issued. This conduct indicates a lack of diligence. A party ought to act proactively and not wait until execution has commenced to seek the court's intervention.

Determination

16. The court's discretion to interfere with execution proceedings must be exercised judicially and only upon a demonstration of sufficient cause.
17. The Applicant has not provided any credible explanation for the delay in filing this application. Further, no evidence has been tendered to demonstrate that substantial loss would be occasioned if the execution is allowed to proceed. There is equally no allegation or proof of any procedural irregularity or impropriety in the issuance of the warrants of attachment and proclamation.
18. In the circumstances, the Court is not persuaded that this is a proper case for the exercise of discretion in favour of the Applicant.
19. In the end, I make the following orders on the Notice of Motion dated 13th March 2025:
 1. Leave to appeal the judgment delivered on 04th July 2024 in SCCCOMM E286 of 2024 out of time is declined.
 2. Lifting of any warrants of attachment of property and proclamation of attachment in the said judgment is correspondingly declined
 3. Applicant will bear its own costs.
 4. File closed

DELIVERED AT NAIROBI THIS 22ND DAY OF MAY 2025

WAMAE.T. W. CHERERE

JUDGE

Appearances

Court Assistant - Ruth

For Applicant - Mr. Kiranda for Kibet Rop & Co. Advocates

For Respondent - N/A for M.B.Muchiri & Co.

