



REPUBLIC OF KENYA



**Chege & another v Kisilu (Civil Miscellaneous E285 of 2025)  
[2025] KEHC 12200 (KLR) (Civ) (15 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 12200 (KLR)

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

**CIVIL**

**CIVIL MISCELLANEOUS E285 OF 2025**

**TW CHERERE, J**

**MAY 15, 2025**

**BETWEEN**

**GABRIEL NJOGU CHEGE ..... 1<sup>ST</sup> APPLICANT**

**DAVID NDUNGU MURITHI ..... 2<sup>ND</sup> APPLICANT**

**AND**

**CHRISTINE NZILANI KISILU ..... RESPONDENT**

**RULING**

“Justice is not served by speed alone, but by the careful balancing of rights, discretion, and fairness to all parties who seek redress before the court.”

1. By a Notice of Motion dated 06<sup>th</sup> March 2025 brought under Sections 3 and 3A, of the [Civil Procedure Act](#) and Order 22 rule 22, Order 42 Rule 4, 6 and 7, Order 50 Rule 5 and Order 51 Rule 1 and 3 of the [Civil Procedure Rules](#), the Applicants seek the following orders:
  1. Leave to appeal out of time out of time
  2. That such leave do operate as a stay of execution of the judgment delivered on 12<sup>th</sup> June 2024 in Milimani CMCC E1332 of 2022
  3. Stay be secured by a bank guarantee
  4. Costs to abide the outcome of the appeal
2. The application is supported by the affidavit of Quincy Bosire advocate sworn on 06<sup>th</sup> March 2025 and on grounds that:1. They are aggrieved by the said judgment2. They are willing to furnish security3.



They are apprehensive that the Respondent may not be able to refund the decretal sum in the event the appeal succeeds.

3. The application is opposed through grounds of opposition dated 22<sup>nd</sup> April 2025, *inter alia*, that;1. Applicants are guilty of laches2. Applicants have not met the conditions for stay in Order 42 rule 6 of the [Civil Procedure Rules](#)3. The security provided is insufficient4. The Applicants want to have endless litigation
4. From the supporting affidavit and the grounds of opposition, the Court identifies the following issues for determination:
  1. Whether the Applicants have established a sufficient basis for the grant of leave to appeal out of time;
  2. Whether the Applicants have met the conditions for the grant of stay of execution pending appeal.

## **Analysis and Determination**

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

5. Section 79G of the [Civil Procedure Act](#), which empowers the Court to admit an appeal out of time if the applicant demonstrates good and sufficient cause.
6. In *Leo Sila Mutiso v Rose Hellen Wangari Mwangi* [1999] eKLR, the Court of Appeal laid down the guiding principles:

“It is now well settled that the decision whether or not to extend the time for appealing is essentially discretionary... The discretion is unfettered except that it should be exercised judicially.”
7. The Supreme Court in [Nicholas Kiptoo Arap Korir Salat v IEBC & 7 Others](#) [2014] eKLR stressed that:

“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... The delay should be explained to the satisfaction of the court.”
8. The judgment sought to be appealed against was delivered on 12<sup>th</sup> June 2024. The present application was filed on 06<sup>th</sup> March 2025, a delay of nearly nine months. The Applicants have simply asserted that they are aggrieved by the decision without providing any explanation for this delay.
9. The Applicants’ assertion that they are aggrieved by the judgment does not, in itself, constitute a satisfactory explanation for the delay. Being aggrieved is the very basis upon which an appeal is ordinarily pursued and does not absolve a litigant from the obligation to account for inordinate delay. A party seeking extension of time must provide a plausible and credible explanation for the entire period of delay. In the present case, the Applicants have failed to do so. The Court is therefore not satisfied that the delay has been sufficiently explained or justified. Consequently, the prayer for leave to appeal out of time is declined.



## 2) Stay of Execution Pending Appeal

10. The Applicants further seek stay of execution of the judgment pending the intended appeal. However, as leave to appeal out of time has been denied, there is no competent appeal on record upon which a stay can be anchored.
11. The Court of Appeal in *Equity Bank Ltd v West Link Mbo Ltd* [2013] eKLR held:

“An order of stay of execution presupposes the existence of a valid appeal. In the absence of an appeal, there is nothing to stay.”
12. In the final analysis, the Court finds that:
  1. The Applicants have not established sufficient cause for extension of time
  2. In the absence of leave, there is no valid appeal to warrant an order of stay
  3. This being a miscellaneous file, it is closed

**DELIVERED AT NAIROBI THIS 15<sup>TH</sup> DAY OF MAY 2025**

**WAMAE.T. W. CHERERE**

**JUDGE**

Appearances

Court Assistant - Abdirizack

For Applicants - N/A for Kimondo Gachoka & C. Advocates

For Respondent - Ms. Maingi for Maingi Musyimi Associates

