



**Nyambati v Okenwa & another (Civil Miscellaneous Application
E338 of 2025) [2025] KEHC 12196 (KLR) (Civ) (15 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 12196 (KLR)

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

CIVIL

CIVIL MISCELLANEOUS APPLICATION E338 OF 2025

TW CHERERE, J

MAY 15, 2025

BETWEEN

DAUGLAS ONYINKWA NYAMBATI APPLICANT

AND

KEBU OKEMWA 1ST RESPONDENT

INDAMANJE SAVINGS & CREDIT SOCIETY LTD 2ND RESPONDENT

RULING

“The Court may extend time where the delay is not inordinate and the interests of justice favour a hearing on the merits.”

1. The Applicant, by a Notice of Motion dated 14th March 2025, seeks the following substantive orders:
 1. Leave to appeal out of time against the judgment delivered on 20th December 2024 in Nairobi CMCC No. E1758 of 2021;
 2. A stay of execution of the said judgment pending the hearing and determination of the intended appeal.
2. The application is brought under Order 22 Rule 22, Order 42 Rules 4, 6 and 7, Order 51 Rules 1 and 2 of the [Civil Procedure Rules 2010](#), and Sections 3 and 3A of the [Civil Procedure Act](#).
3. The application is supported by the affidavit of Emily Bor, Advocate, sworn on 14th March 2025 who avers that:
 1. The Applicant is aggrieved by the judgment delivered on 20th December 2024.
 2. The Applicant intends to appeal on the issue of quantum.



3. The intended appeal has high chances of success.
4. The Applicant is willing to provide a bank guarantee to secure the decretal sum.
4. The Respondents filed a response by way of a relying affidavit sworn by A M Munyoki advocate, on 09th April 2025 on the grounds that:
 1. The application is an abuse of the court process
 2. The impugned judgment was delivered on 17th March 2023
 3. Do not oppose the application on condition that the Appellant should deposit the total decretal sum in an interest earning account in the name of both advocates were served on 18th March 2025 but neither filed responses nor attended court. The application remains unopposed.

Issues for Determination

5. I have considered the application in light of the supporting affidavit and identified two key issues for determination:
 1. Whether the Applicant has made a case for leave to appeal out of time
 2. Whether the Applicant is entitled to an order of stay of execution pending appeal.

1. Leave to Appeal Out of Time

6. Under Section 79G of the *Civil Procedure Act*, an appeal from a subordinate court to the High Court must be filed within thirty days from the date of judgment. The judgment in question was delivered on 20th December 2024, and the present application was filed on 14th March 2025, nearly three months later.
7. In *Nicholas Kiptoo Arap Korir Salat v Independent Electoral and Boundaries Commission & 7 Others* [2014] eKLR, the Supreme Court outlined the principles governing the extension of time:

“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 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. Although the delay is not expressly explained in the supporting affidavit, it is excusable in the interest of justice. The Respondents have not demonstrated any specific prejudice, nor did they actively oppose the application. In the circumstances, and bearing in mind the interest of justice, I am satisfied that this is an appropriate case to exercise discretion in favour of allowing the Applicant to ventilate their appeal.

2. Stay of Execution Pending Appeal

9. Under Order 42 Rule 6(2), the Court must be satisfied that:



1. The Applicant will suffer substantial loss unless the order is made;
 2. The application is brought without unreasonable delay;
 3. Such security as the Court orders has been given.
10. In seeking stay of execution, the Applicant has alleged that the Respondents are men of straw and may be unable to refund the decretal sum if paid.
11. The assertion that the Respondents may be unable to refund the decretal sum, though untested, remains unrebutted. The Respondents' failure to respond or appear lends weight to the Applicant's apprehension and I am satisfied that the risk of substantial loss has been demonstrated.
12. The Applicant has expressed willingness to furnish a bank guarantee. However, the Court considers that the more appropriate form of security would be a deposit the decretal sum in an interest earning account as proposed by the Respondents.

Disposition

13. In light of the foregoing, the Notice of Motion dated 14th March 2025 is allowed on the following terms:
1. Leave to appeal out of time against the judgment delivered on 20th December 2024 in Nairobi CMCC No. E1758 of 2021 is hereby granted.
 2. The Memorandum of Appeal shall be filed and served within seven (7) days of this ruling
 3. There shall be a stay of execution of the judgment on condition that the Applicant deposits the full decretal sum in an interest earning account in the name of both advocates
 4. This being a Miscellaneous Application, it is hereby closed.
 5. The costs of this application shall be in the cause

Orders accordingly.

DELIVERED AT NAIROBI THIS 15TH DAY OF MAY 2025

WAMAE.T. W. CHERERE

JUDGE

Appearances

Court Assistant - Abdirizack

For Appellants - Ms. Muthoni for Ngugi Kamau Advocates

For Respondents - N/A for TMJ Advocates LLP

