



**Theuri v Muki Sacco Society Limited & another (Civil Appeal
E768 of 2024) [2025] KEHC 12187 (KLR) (Civ) (15 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 12187 (KLR)

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

CIVIL

CIVIL APPEAL E768 OF 2024

TW CHERERE, J

MAY 15, 2025

BETWEEN

DANSON KINGORI THEURI APPELLANT

AND

MUKI SACCO SOCIETY LIMITED 1ST RESPONDENT

SUPERVIEW AUCTIONEERS 2ND RESPONDENT

RULING

“While the right to be heard on appeal is a cornerstone of justice, it must be pursued with promptness, lest it erode the finality of judgments and the rights of successful litigants.”

1. Before this Court is the Notice of Motion dated 22nd September 2024 brought under Rule 53 of the High Court (Practice and Procedure) Rules, Order 42 Rule 6(2), and Order 51 Rule 1 of the Civil Procedure Rules, and Sections 1A, 1B and 3A of the *Civil Procedure Act*. The Applicant seeks the following orders:
 1. Spent;
 2. Stay of execution of the judgment and/or decree delivered on 30th May 2024 in CTC Suit No. 57 of 2020 at the Cooperative Tribunal, Nairobi;
 3. Leave to appeal out of time against the said judgment;
 4. That HCCA/E768/2024 be deemed duly filed and served; and
 5. Costs of the application.



2. The application is supported by the affidavit of Daniel Ngugi Kamau, advocate for the Applicant, sworn on 02nd July 2024. The Applicant explains that the delay in filing the appeal was occasioned by unavailability of the lower court file and a breakdown in the e-filing system on 29th and 30th June 2024. He states that the delay was only for one day and expresses willingness to comply with any reasonable conditions imposed by the court, including the provision of security.
3. Despite being served on 2nd May 2025, the Respondents neither filed responses nor attended court.

Issues for Determination

4. I have considered the application in light of the supporting affidavit and I find that it raises two key issues:
 1. Whether leave to appeal out of time should be granted;
 2. Whether an order for stay of execution should issue pending appeal.

1. Leave to appeal out of time

5. Section 79G of the *Civil Procedure Act* provides:

“Every appeal from a subordinate court to the High Court shall be filed within a period of thirty days... Provided that the appeal may be admitted out of time if the appellant satisfies the court that he had good and sufficient cause for not filing the appeal in time.”

6. The impugned judgment was delivered on 30th May 2024. The Applicant attributes the delay to logistical and technical challenges, particularly the unavailability of the file and system downtime on the e-filing platform. The delay, according to the Applicant, was only one day.
7. In *Leo Sila Mutiso v Rose Hellen Wangari Mwangi* [1999] 2 EA 231, the Court of Appeal held that the decision to extend time is discretionary and should be guided by the length of the delay, the reason for it, the chances of success of the intended appeal, and the degree of prejudice to the Respondent.
8. In the circumstances of this case, the delay is not inordinate and has been reasonably explained. The Respondent has not demonstrated any prejudice that would result from the grant of leave.

2) Stay of Execution Pending Appeal

9. The conditions for stay are set out under Order 42 Rule 6(2) of the Civil Procedure Rules:

“No order for stay of execution shall be made... unless—

- a. the court is satisfied that substantial loss may result to the applicant unless the order is made
 - b. the application has been made without unreasonable delay
 - c. such security as the court orders... has been given
10. The Applicant has made an open offer to abide by any conditions the court may impose, including provision of security. However, he has not demonstrated what substantial loss he stands to suffer if stay is not granted. There is no allegation or evidence that the Respondent is unable to refund the decretal sum should the appeal succeed, nor that execution would render the appeal nugatory.



11. As emphasized in *Samvir Trustee Limited v Guardian Bank Limited* [2007] eKLR:

“.....It is not enough to pay lip service to the requirement of substantial loss. Substantial loss is what has to be prevented by preserving the status quo because such loss would render the appeal nugatory. Therefore, the applicant must establish other factors which show that the execution will create a state of affairs that will irreparably affect or negate the essential core of the applicant as the successful party in the appeal. The general principle is that a successful party is entitled to the fruits of his judgment and that stay should not be granted merely because an appeal has been filed.”

12. An offer for security, though commendable, cannot substitute the obligation to establish substantial loss. In the absence of such demonstration, the court is not persuaded to grant stay of execution.

Disposition

13. The upshot of the foregoing is that:

1. The application for leave to appeal out of time is allowed.
2. The prayer for stay of execution pending appeal is dismissed.
3. HCCA No. E768 of 2024 is deemed duly filed and properly before this court.
4. The matter be mentioned before the Deputy Registrar on 26th June 2025 to confirm the filing and the service of the record of appeal

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 Bwo'Oigara, Getange & Co. Advocates

