



**West Kenya Sugar Company Ltd v Khachina & another (Miscellaneous Civil Application E030 of 2023) [2025] KEHC 7262 (KLR) (22 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 7262 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KAKAMEGA  
MISCELLANEOUS CIVIL APPLICATION E030 OF 2023  
SC CHIRCHIR, J  
MAY 22, 2025**

**BETWEEN**

**WEST KENYA SUGAR COMPANY LTD ..... APPLICANT**

**AND**

**AINEAH OBONYO KHACHINA ..... 1<sup>ST</sup> RESPONDENT**

**THE HON ATTORNEY GENERAL ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. The Applicant's Notice of Motion dated 24<sup>th</sup> April 2023 seeks orders as follows:
  1. Spent
  2. Spent
  3. That the Honourable Court be pleased to extend the time within which the Applicant is to file and serve a Memorandum of Appeal and a Record of Appeal against judgment and decree of the Hon. C.N.NJALALE (P.M) dated and delivered at the Principal Magistrates' Court at Butali on 16<sup>th</sup> March, 2023 in Butali Civil Case Number 67 of 2018- Aineah Obonyo Khachina v West Kenya Sugar Company Limited and Hon. Attorney General.
  4. That this Honourable Court be pleased to stay execution of the whole judgment and decree in Butali Civil Case Number 67 of 2018- Aineah Obonyo Khachina v West Kenya Sugar Company Limited and Hon. Attorney General, pending the hearing and determination of the intended appeal and more specifically be pleased to lift the Proclamation Notice dated 20.4.2023 served upon the Applicant by Messr Eshikhoni Auctioneers.
  5. That the Honourable Court be pleased to grant such further or other Orders as it may deem just and expedient in the circumstances of this case.



6. That the costs of this Application do abide the outcome of the intended appeal.

### **The Applicant's case**

2. The application is supported by the affidavit of Eunice Owuor, who describes herself as the legal manager of the Applicant company. She states that the Applicant is aggrieved by the decision of the trial Court in its entirety and seeks the leave of this court to file the instant appeal against the said decision ; that any execution by the respondent would render its appeal nugatory.
3. The Applicant believes that its Appeal has a high chance of success and it ought to be given an opportunity to argue the same, failing which it would have been driven from the seat of justice. That the applicant is willing and ready to comply with any conditions which this Court may impose.

### **The Respondent's Case**

4. The Application is opposed by the 1<sup>st</sup> Respondent. In his replying affidavit dated 4<sup>th</sup> May,2023, he states that the Application is made in bad faith ; is an afterthought, is designed to defeat due process since it does not meet the threshold for granting stay of execution under Order 42 Rule 6 (1) and (2) of the Civil Procedure Rules
5. He further avers that the applicant has not offered any security of costs for the appeal and that the judgement at the trial court was well reasoned .
6. Further, that the application herein will serve no purpose but to deny him the fruits of the judgment.

### **The Applicant's Submissions.**

7. The applicant relies on Order 42 Rule 6 of the Civil Procedure Rules and submits that it has met the threshold to qualify for an Order of stay of execution pending appeal. The applicant is apprehensive that the 1<sup>st</sup> respondent will execute the decree and he will suffer substantial loss.
8. The applicant submits that the application was filed without unreasonable delay as the lapse in not filing the appeal in time is just by a week. That the respondent will not suffer any harm if the extension is granted.
9. The applicant attributes his failure to file his appeal within time to the fact that the trial court judgment was deferred on several instances and the applicant was unaware when the judgment was finally delivered.
10. The applicant further submits that he is ready and willing to offer security for the performance of the decree. Finally the applicant contends that the intended appeal will be rendered nugatory in the event that orders for stay are not granted.

### **The 1<sup>st</sup> Respondent submissions.**

11. The 1<sup>st</sup> respondent submits that that the intended appeal is a mere smoke screen as the applicant has not been able to demonstrate that there exists an arguable appeal with high chances of success nor has satisfied the requisite conditions outlined under Order 42 Rule 6 of the Civil Procedure Rules to warrant the granting of the orders sought. The respondent further submits that the application herein is an afterthought and a reaction to the commencement of the execution proceedings against them by the respondent. That it is evident that this application is a desperate attempt to lift the proclamation notice.



12. The respondent further submits that even though the granting of stay orders is discretionary, the same should not be issued based on flimsy reasons advanced by the applicant herein.
13. In conclusion the respondent, states that stay orders can only be granted if the applicant unequivocally states that they are ready and willing to offer security on whatever terms as may be imposed by this court in order to protect the interest of the decree holder.

### **Determination**

14. In an Application for extension of time, the Applicant is under the duty to explain, to the satisfaction of the court, why there was a delay. In *Nicholas Kiptoo Korir Arap Salat v IEBC & 7 others*, [2014] eKLR, the supreme court set the guiding principles in applications for extension of time are as follows;
  - a. extension of time was not a right of a party. It was an equitable remedy that was only available to a deserving party at the discretion of the court;
  - b. a party who sought for extension of time had the burden of laying a basis to the satisfaction of the court;
  - c. whether the court should exercise the discretion to extend time, was a consideration to be made on a case-to-case basis;
  - d. whether there was a reasonable reason for the delay. The delay should be explained to the satisfaction of the court;
  - e. whether there would be any prejudice suffered by the respondents if the extension was granted;
  - f. whether the application had been brought without undue delay; and
  - g. whether in certain cases, like election petitions, public interest should be a consideration for extending time.”
15. Further in the case of *Board of Management, Changamwe Secondary School v Premji Patel Company Limited* [2017] KEHC 3007 (KLR) the court held: “..... in order for the court to allow an applicant to file an appeal out of time the applicant must satisfy the court that there was good and sufficient cause for not filing the appeal in time. It is the responsibility of the Applicant to state the reason for the delay and explain to the satisfaction of the court why the said reason should be sufficient for the court to exercise its discretion in his favour “ (Emphasis added)
16. A perusal of the grounds in support of the Application as well as the affidavit show that the Applicant has not informed the court of the reasons for the delay. Stating that the delay was unintentional and regrettable are not reasons for the delay. I have seen an attempt by the Applicant’s counsel, to explain in the submissions the reasons for the delay, but submissions are not pleadings. The reasons ought to have come from the Applicant, and in its pleadings.
17. I have noted that the delay was about 15 days, which is not long. However in the absence of any explanation as to why the Appeal was not filed within the period stipulated under section 79G of the *Civil procedure Act*, which I consider to be of paramount consideration, then the Applicant is underserving of the orders sought. If an Applicant seeking for extension of time, gets away by meeting all the conditions set out in Salat’s case( *supra*), save the reasons for the delay, then such an approach will defeat the purpose of timelines as set by the law or the Rules.
18. The Application has no merit. It is hereby dismissed, with costs to the Respondent.
19. The interim orders issued on 25<sup>th</sup> April are hereby discharged.



**DATED , SIGNED AND DELIVERED VIRTUALLY, AT ISIOLO ,THIS 22<sup>ND</sup> DAY OF MAY 2025**

**S. CHIRCHIR.**

**JUDGE.**

In the presence of :

Godwin Lucheli- Court Assistant.

