



**Aptic Credit Limited v Mwaura (Miscellaneous Application
E024 of 2025) [2025] KEHC 8680 (KLR) (Civ) (19 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 8680 (KLR)

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

CIVIL

MISCELLANEOUS APPLICATION E024 OF 2025

JN MULWA, J

JUNE 19, 2025

BETWEEN

APTIC CREDIT LIMITED APPLICANT

AND

LEAH WANJIKU MWAURA RESPONDENT

RULING

1. By a Notice of Motion dated 14/01/2025 the Applicant Aptic Credit Limited sought orders of stay of execution of the trial court Judgment delivered on 29/11/2024 pending hearing and determination of an intended appeal against the said judgment wherein the claim was dismissed with costs assessed at Kshs. 25,000/-. It is predicated upon Order 49 Rule 5 and 41 Rule 4 of the Civil Procedure Rules and section 79G of the *Civil Procedure Act*, and further supported by the affidavit sworn by Jackson Ikua Advocate on record for the applicant on 14/01/2025.
2. The motion is opposed by a replying affidavit of Francis Muriithi Advocate for the Respondent dated 30/01/2025 and oral arguments by both counsel before the court.
3. The applicant's case is that judgment was not delivered on the scheduled date, 29/11/2024, but on a date that was not communicated to the applicant, and only uploaded in the CTS without notice on 2/12/2021 upon which the Applicant's Advocate came to know of the same after reopening office in the new year on 13/01/2025 which prompted filing of the instant application on 14/01/2025 without any delay.
4. Being aggrieved by the ruling, the Applicant seeks leave to file appeal out of time, based on the circumstances stated, and for the wider interest of justice.



5. In opposing the application, the Respondent filed a replying affidavit urging for its dismissal, on grounds that the delay of one month and three weeks is inordinate as the said judgment had been uploaded in the CTS and that the motion was only filed upon a demand for payment was made and further that the intended appeal raises both issues of law and fact in violation of Section 38 of the *Small Claims Court Act*, and urging for its dismissal for lack of merit.
6. I have considered each party's case against the material facts placed before the court. The Applicant's claim before the Small claim Court adjudicator was dismissed for lack of proof on a balance of probabilities. The applicant has not in the court view provided plausible reasons why it did not by its advocates, access the CTS upto and until a demand letter and notice to execute for the costs were served upon its Managing Director.
7. A perusal of the CTS screenshot shows that the judgment was uploaded 40 days before filing of the application. It cannot be true that the Applicants advocates had not accessed it for the entire period as courts were at all times proceeding with matters. That argument is therefore not well taken.
8. Section 79G of the *Civil Procedure Act* provides for filing of appeals to the High Court within 30 days with a proviso that if good and sufficient cause is shown, leave may be granted.
9. Conspicuously missing from the Applicant's motion is the underpinning legal provision, Order 42 Rule 6 CPR that provides for conditions of stay of execution pending appeal that a party ought to comply with for grant of stay of execution pending appeal. Being the cornerstone for stay orders, and there being no explanation offered, the order for stay in this case, on costs only is declined. Let the applicant pay costs of the dismissed suit to the Respondent.
10. The court has considered the arguability of the intended appeal as may be discerned from the draft memorandum of appeal.

The degree of prejudice too has been considered as set out in the case of *Thuita Mwangi v Kenya Airways Ltd* [2003].
11. The court finds no satisfactory reasons to deny leave to file appeal to the applicant as no irreparable loss or prejudice has been demonstrated that the respondent may suffer as the suit was dismissed with costs, which costs the court has ordered to be paid as a condition for leave being granted.
12. In the case of *Raila Odinga v IEBC & 4 Others* [2013] eKLR, the supreme Court held that a court of law should not allow the prescriptions of procedure and form to trump the primary duty of dispensing substantive justice to the parties.
13. The court holds the view that denial of the sought for extension of time would cause injury to the Applicant who would be locked out of its pursuit of justice to the highest level as provided at *the constitution* and as held in the *Nguruman Limited v Jan Bonde Nielsen & 2 Others* [2014] eKLR, *Nicholas Kiptoo Arap Korir Salat v IEBC*[2014] eKLR.
14. Further, the Supreme Court also held that extension of time is an equitable remedy that is only deserving to a party at the courts discretion and ought to be exercised on a case to case basis upon consideration of any prejudice the respondent may suffer if the extension is granted.
15. Having considered the above legal underpinnings and material facts provided by both parties the Motion dated 14/01/2025 partially succeeds;
 - a. The applicant Aptic Credit Limited is granted an extension to file an appeal out of time.



- b. The Memorandum of Appeal shall be filed within 45 days of this ruling and the Record of Appeal within 60 days.
- c. The prayer for stay of execution for costs of Kshs. 25,000/- is declined. Let the applicant pay the same within 15 days of this ruling and in default execution to issue.
- d. Costs of this application shall be borne by the applicant.

DELIVERED DATED AND SIGNED AT NAIROBI THIS 19TH DAY OF JUNE, 2025.

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JANET MULWA.

JUDGE

