



**Macharia (Suing as the Administrator of the Estate of Gichuhi Macharia (Deceased))
& another v Terrace Hotel Limited & 7 others (Commercial Case E077 of 2022)
[2025] KEHC 8502 (KLR) (Commercial and Tax) (5 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 8502 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL CASE E077 OF 2022**

F GIKONYO, J

JUNE 5, 2025

BETWEEN

**PETER MWANGI MACHARIA (SUING AS THE ADMINISTRATOR OF THE
ESTATE OF GICHUHI MACHARIA (DECEASED)) 1ST PLAINTIFF**

TITUS THUO MACHARIA 2ND PLAINTIFF

AND

TERRACE HOTEL LIMITED 1ST DEFENDANT

ONESMUS MWANGI MWAURA 2ND DEFENDANT

MWANGI MACHARIA KIRIMA 3RD DEFENDANT

EDWIN GACHUHI MAINA 4TH DEFENDANT

NELSON MWANGI 5TH DEFENDANT

PETER GICHANGO GACHUCHA 6TH DEFENDANT

NELSON GATHARA 7TH DEFENDANT

DAVID IRUNGU WANJAU 8TH DEFENDANT

RULING

1. Before me is the defendants' Notice of Motion dated 7th February 2025, seeking for: - leave to file an appeal against the judgment entered or ruling delivered on 24th August 2023; and a stay of execution pending their intended appeal.



2. The application is based on the grounds set out in the supporting affidavit sworn by the 3rd defendant and the 1st defendant's director, Mwangi Macharia.

Grounds

3. The grounds upon which the application is made are that: No notice was issued to the defendants or their advocates of the existence of a judgment or the date of delivery.
4. The defendants only learnt about the ruling through the plaintiff's advocate's letter dated 5th February 2025. Yet, the judgment is for a huge sum of Kshs. 19,218,669/-, which must be paid to the 1st defendant by the respondents who are its directors. The ruling also requires the defendants to forfeit their shareholding in the 1st defendant.
5. The statutory period for appealing against the ruling has since expired, hence, the need for extension of time to file appeal.
6. As evidence, the defendants exhibited: -
 1. a letter dated 5th February 2025 from the plaintiffs' advocate to the defendants' advocate forwarding the draft decree in respect of the judgment;
 2. Record of the court proceedings obtained from the Judiciary Case Tracking System (CTS) indicating that on 23rd August 2023, ruling in the matter was reserved for ruling on notice and on 24th August 2023 ruling was delivered.
 3. a notice of appeal dated 7th February 2025.

Response

7. In opposition to the application, the plaintiffs filed a replying affidavit sworn by the 1st plaintiff, Peter Mwangi Macharia on 11th March 2025. They also filed written submissions dated 28th March 2025.
8. The plaintiffs contended that the ruling was delivered on 23rd August 2023, according to the CTS, where the ruling was posted after his advocate was able to obtain a copy from the registry. He asserted that the CTS has made it extremely possible and easy for both litigants and advocates to access judicial information concerning matters filed in court by merely logging in and establishing the status of a case. In the event of any challenges, a party can write to the Deputy Registrar (DR). He faulted the defendant for not providing any evidence of a letter to the DR to the effect that they had faced any challenges in accessing information for the instant case. He pointed out that the CTS shows that the judgment was delivered on 23rd August 2023, arguing that it was a proper notice from the trial court to the parties notifying them that judgment had been delivered.
9. The plaintiffs contended that the defendants have not met the threshold for a stay pending appeal because they have not filed a proper and compliant notice of appeal. He added that the defendants have not proposed any security for the due performance of the decree.
10. The plaintiffs relied on *Githau v Kagiri & Another (Civil Appeal No. 314 of 2023)*, *Nicholas Kiptoo Arap Korir Salat v The Independent Electoral and Boundaries Commission & 7 Others* (Sup. Ct Application No. 16 of 2014) [2014] eKLR, *Paul Musili Wambua v Attorney General & 2 Others* [2015] eKLR, *James Wangalwa & Another v Agnes Naliaka Cheseto* [2012] eKLR, *Samvir Trustee Limited v Guardian Bank Limited* [2007] eKLR.



Analysis and Determination

Leave to appeal

11. The Court's power to extend time to file appeal is discretionary, but which must be exercised judicially, not capriciously.
12. The principles governing exercise of discretion in extension of time were laid out by the Supreme Court in *Nicholas Kiptoo Arap Korir Salat v The Independent Electoral and Boundaries Commission & 7 Others* [Supra] , as follows:-

“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 for 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.”

13. The impugned ruling was delivered on 24th August 2023. The instant application was filed on 7th February 2025, which is 533 days after the delivery of the ruling. Is this inordinate delay?
14. In *Andrew Kiplagat Chemaringo v Paul Kipkorir Kibet* [2018] eKLR, the Court of Appeal pronounced that: -

“(12) The law does not set out any minimum or maximum period of delay. All it states is that any delay should be satisfactorily explained. A plausible and satisfactory explanation for delay is the key that unlocks the court's flow of discretionary favour. There has to be valid and clear reasons, upon which discretion can be favourably exercisable.”

15. What amounts to inordinate delay will depend on the circumstances of the case and the explanations provided by the applicant.

Reasonable explanation for delay

16. According to the defendants, they had no notice of the ruling or judgment delivered on 24th August 2023. They claimed that they learnt of the ruling on 6th February 2025, when they were notified by their advocate following his receipt of a letter dated 5th February 2025 from the plaintiff's advocate with a draft decree.
17. The record of the CTS shows that the matter was reserved for ruling on notice on 23rd August 2023 and that the ruling was delivered on 24th August 2023, but the ruling was posted on 9th July 2024. The plaintiffs' advocate wrote to the DR on 7th February 2024 requesting for a copy of the ruling.
18. There is no evidence that the notice of delivery of the ruling was served upon the defendants. The plaintiffs have also not contested the fact that the impugned ruling was delivered without notice. They only stated that the defendants ought to have checked the CTS.



19. Notice of delivery of a ruling is a requirement of the law. Order 21 of the CPR. Thus, proof that a ruling was delivered without notice may be a sufficient reason for the enlargement of time. Nonetheless, the party applying must move the court without unreasonable delay from the date it became aware of the impugned ruling. See *Ngoso General Contractors Ltd. v Jacob Gichunge* Civil Appeal No. 248 of 2001 [2005] 1 KLR 737
20. Accordingly, I find that there is a plausible and satisfactory explanation for the delay.

Arguable appeal

21. The subject of the impugned ruling was the plaintiffs' application to strike out the defendants' statement of defence. The intended appeal is premised upon the right to be heard on merit. I do not think that the applicants' intended appeal is frivolous.

Prejudice

22. In sum, is there prejudice to be suffered by the respondents?
23. A proportioned balance of the parties' competing rights is; not to drive away the applicants from the seat of justice unheard, or deprive the respondents of the right to the fruits of the judgment.
24. The balance is maintained through appropriate orders for security for costs and judgment that may become payable by the applicants. Order 42 rule 6 of the Civil Procedure Rules.

Stay pending appeal

25. The applicants have made out a case for extension of time. They must however, establish sufficient cause- that substantial loss will occur unless stay is granted- but also the willingness to provide security in their quest for stay of execution pending appeal. Order 42 Rule 6 of the Civil Procedure Rules. *Butt v Rent Restriction Tribunal* [1979] KECA 22 (KLR) *National Industrial Credit Bank Ltd v Aquinas Francis Wasike & Another* [2006] eKLR
26. The applicants have not proposed any security for stay pending appeal. They have merely complained that the judgment is for a colossal sum of Kshs. 19,218,669/-.

Security

27. It is the Court's discretion to determine suitable security depending on the circumstances of the case. *Arun C. Sharma v Ashana Raikundalia t/a Raikundalia & Co. Advocates & 2 Others* [2014] eKLR
28. To attain the proportioned balance I spoke about earlier, grant of stay of execution should be on condition; deposit one half of the decretal sum in an interest-earning account in the joint names of both legal counsels. This is just and fair in the circumstances of this case.

Conclusion

29. In conclusion, the application dated 7th February 2025 is allowed, in the following terms: -
 1. I direct the applicants to file and serve the Notice of Appeal within 14 days of today.
 2. There is a stay of execution pending the hearing and determination of the appeal on condition that the applicants deposit one half of the decretal sum in an interest-earning account in the joint names of legal counsel for the parties herein within 30 days of today.



3. In the event of failure to comply with (2) above, the stay will automatically lapse without necessity to apply.
4. The applicants shall bear the costs of this application.

DATED, SIGNED AND DELIVERED AT NAIROBI THROUGH MICROSOFT ONLINE APPLICATION THIS 5TH DAY OF JUNE, 2025

F. GIKONYO M

JUDGE

In the presence of: -

Wangalwa for Appellant/Defendants

Owang for Respondent/Plaintiff

CA Kinyua

