



REPUBLIC OF KENYA



KENYA LAW
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**Nyongesa v Lukuyu (Civil Appeal E001 of 2020)
[2025] KEHC 7569 (KLR) (4 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 7569 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KITALE
CIVIL APPEAL E001 OF 2020**

RK LIMO, J

JUNE 4, 2025

BETWEEN

MARTIN NYONGESA APPLICANT

AND

MILTON MBOYA LUKUYU RESPONDENT

RULING

1. Martin Nyongesa the applicant herein has brought an application dated 26/3/2025 asking for the following prayers;-
 - i. Spent
 - ii. Spent
 - iii. That pending the hearing and determination of an application for extension of time to appeal out of time there be stay of execution of judgment dated 31/1/2025 and any consequential orders thereof
2. The grounds upon which the prayer is sought are as follows;-
 - a. That Justice Mrima rendered a judgment on 31/1/25 striking out the appeal herein.
 - b. That the applicant was unaware that the judgment had been delivered because there was no notice issued.
 - c. That the applicant was made aware of the judgment when he was served with a bill of costs on 6/3/25.
 - d. That the applicant wishes to pursue an appeal and has deposited Kshs.500,000/- which can be treated as security.



3. The applicant has sworn an affidavit sworn on 26/3/25 where he has majorly reiterated the above grounds. He avers that he wants to pursue an appeal and challenge the decision of this court in the Court of Appeal.
4. In his written submissions, the applicant contends that he was notified on 6/6/24 that judgment had been deferred because it was not ready and would be delivered on notice.
5. He maintains that he did not receive any notice that judgment was to be delivered on 31/1/25.
6. The respondent has opposed this application through a replying affidavit sworn on 4/4/25. The respondent faults the applicant for undue delay in filing this application.
7. The respondent contends that if the applicant learnt of the judgment on 6/3/25, there is no reason given as to why this application was filed on 26/3/25.
8. The respondent contends that the applicant has approached this court with unclean hands and is intended to deny or delay his fruits of judgment.
9. This court has considered this application and grounds raised. I have looked at the objection raised by the respondent. The applicant is seeking the discretion of this court to order stay pending determination of his application for extension of time to lodge his appeal out of time.
10. I have checked at the record and it is true that this court was to deliver judgment on the appeal herein on 6/6/2024 but the judgment was not delivered on that day. The same was delivered on 31/1/25 and there is no record indicating that the appellant/applicant or the respondent were duly notified. The judgment was delivered in the absence of both counsels on record.
11. The respondent has not disputed this anomaly which goes into the root of the appellant's right to appeal.
12. This court finds that the applicant has made out a strong case for this court to exercise its discretion in his favour. The application dated 26/3/25 is merited and is allowed in terms of prayer 3. The amount of Kshs.500,000/- earlier deposited can be treated as security in the meantime.

DELIVERED, DATED AND SIGNED AT KITALE THIS 4TH DAY OF JUNE, 2025.

HON JUSTICE R.K. LIMO

KITALE HIGH COURT

Ruling delivered in open court

In the presence of;

M/s Ngeiywa for Respondent

Nyamweya for Appellant

Duke/Chemosop- Court Assistants

