



REPUBLIC OF KENYA



Wachira v Karimi (Civil Appeal E052 of 2024) [2025] KEHC 8182 (KLR) (12 June 2025) (Ruling)

Neutral citation: [2025] KEHC 8182 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERUGOYA
CIVIL APPEAL E052 OF 2024
EM MURIITHI, J
JUNE 12, 2025**

BETWEEN

ANN NYAGUTHII WACHIRA APPELLANT

AND

CHARITY WANJIRU KARIMI RESPONDENT

RULING

1. The applicant filed a Notice of Motion dated 17th January, 2025 seeking the following orders:
 1. Spent.
 2. Spent.
 3. That this honourable court be pleased to issue an order of stay of execution of warrants of arrest and the subsequent and or prior orders issued on 17th March, 2025 at the Kerugoya Magistrate's court arising from Civil Case no. E032 of 2022 pending the hearing and determination of the intended Appeal no. E052 OF 2024.
 4. That this honourable court be pleased to issue an order to appeal out of time.
 5. Costs be in cause.
2. The application is based on the grounds on the face of the application and a supporting affidavit setting out applicant's case is that the Respondent is in the process of executing the warrants of arrest/orders issued on 17th March, 2025 by Kerugoya Magistrate's arising from Civil case no. E032 of 2022 where the Judgment Creditor was issued with Ksh 351,744/=.
3. Moreover, if the Respondent executes the warrants of arrest, she stands to suffer great loss, both mentally and physiologically as her intended appeal shall be rendered nugatory having in regard that it has high chances of success.



4. The respondent filed a Replying Affidavit of on 15th April, 2025 where it is averred that that judgement was entered in her favour as against the appellant on 27th July, 2022. On 24th January, 2023 the appellant filed the Notice of Motion dated 24th January, 2023 seeking to set aside the Judgement dated 28th July, 2022 amongst other orders thereto. On 3rd April, 2023 by consent of the parties the court set aside the judgement delivered on 28th July, 2022 and granted the appellant leave to file a statement of defence to the claim and fully comply with Order 13 of the Civil Procedure Rules failure to which execution was to proceed.
5. The respondent avers that on 12th July, 2023 the judgement delivered on 28th July, 2022 was set aside for the 2nd time and the appellant was granted leave to file her witness statement. The matter proceeded for full hearing on 11th September, 2023 wherein the parties tendered oral evidence thereon. On 30th October, 2023 judgement was entered in her favour as set out in prayer (a), (b) and (c) of the plaint dated 12 April, 2022. That the notice of motion dated 21st November, 2023 to stay the judgement delivered on 30th October, 2023 was dismissed by the Lower Court on 20th May, 2024.
6. Further, on 17th March, 2025 the lower court issued a warrant of arrest against the appellant for failing to attend court during the hearing of the notice to show cause dated 23rd January, 2024. Lastly, she has been very accommodative to the appellant however, the material placed before this court demonstrates the appellant is undeserving the exercise of discretion of staying the judgement pending the hearing and determination of the appeal.

Submissions

7. The parties chose to rely on their respective affidavits, and ruling was reserved.

Issues

8. Whether leave to appeal out of time should be granted.
9. Whether stay of execution should be granted.

Analysis

10. The applicant filed the notice of motion application seeking orders for: enlargement of time for purposes of filing an appeal out of time and stay of execution pending the hearing and determination of the matter.

Whether leave to appeal out of time should be granted

11. The applicants urge the court to enlarge the time within which he may file an appeal against the Judgment delivered on 30.10.2023 in Kerugoya Civil Case E032 of 2022.
12. The applicant depose that the intended appeal is arguable, has high chances of success and this court has unfettered discretion in granting leave to file an appeal out of time.
13. The applicable law for enlargement of time is Section 95 of the *Civil Procedure Act* and order 50 rule 6 of the Civil Procedure Rules. In *Kiptoo Arap Korir Salat v Independent Electoral and Boundaries Commission and 7 others* [2015] eKLR, the Supreme Court held that the discretion to extend time is indeed unfettered. It is incumbent upon the applicant to explain the reasons for delay in making the application for extension and whether there are any extenuating circumstances that can enable the Court to exercise its discretion in favour of the applicant.



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

Every appeal from a subordinate court to the High Court shall be filed within a period of thirty days from the date of the decree or order appealed against, excluding from such period any time which the lower court may certify as having been requisite for the preparation and delivery to the appellant of a copy of the decree or order: Provided that an 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.

15. The applicant has not explained the reason for the delay in filing the memorandum of appeal. Nevertheless, delay on the part of the applicant of 6 months to file the appeal is not unreasonable. Further, the applicant has an arguable appeal with a high probability of success, as shown in the attached draft memorandum of appeal dated 15th April, 2024 which has raised triable issues.

Whether stay of execution should be granted

16. The principles guiding the grant of a stay of execution pending appeal are well settled. These principles are set under Order 42 rule 6(2) of the Civil Procedure Rules which provides:

“(2) No order for stay of execution shall be made under sub rule (1) unless—

(a) the court is satisfied that substantial loss may result to the applicant unless the order is made and that the application has been made without unreasonable delay; and

(b) such security as the court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the applicant.

17. The Applicant deposes that he will be prejudiced if this court was to deny him orders for stay of execution as the judgment is prejudicial and his intended appeal is arguable.

18. The respondent avers that the applicant has never complied with the court’s judgement despite being accommodative and that she should be allowed the fruits of the judgement.

19. The court considers that there is an arguable appeal, not necessarily one that must succeed. On substantial loss or, as it is sometimes put, whether appeal shall be rendered nugatory, the Court also respectfully agrees with the Court of Appeal in *Mugambi v Galaxy Merchants Limited* [2025] KECA 1007 (KLR) (J. Mohamed, Lessit & Ali-Aroni, JJA.) on a question of committal to civil jail in execution of the decree of trial court that-

“It is our view that incarceration of the applicant cannot be compensated by an award of damages, repaid or reversed if the order for stay is not granted and the appeal succeeds.”

20. The security for the due performance of the decree of the Court finally binding on the appellant on appeal may be secure by an order for the deposit of the decretal sum in Court with a period of thirty (30) days.

Orders

21. Accordingly, the Court finds merit in the application for leave to appeal out of time and for stay of execution dated 17th January, 2025 and the same is granted as prayed.



22. The Applicant shall deposit into Court the decretal sum of Ksh.351,744/= within thirty (30) days, and in default the Respondent shall be at liberty to execute the decree of the trial court.
23. In terms of Order 50 Rule 6 of the Civil Procedure Rules, the costs of the application shall be paid by the Appellant/applicant to the Respondent.

Orders accordingly.

DATED AND DELIVERED THIS 12TH DAY OF JUNE 2025.

EDWARD M. MURIITHI

JUDGE

Appearances:

Ms. Applicant in person.

Mr. Ngigi for the Respondent.

