



REPUBLIC OF KENYA



**KENYA LAW**  
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**Ambe v Mukayagi (Civil Appeal E556 of 2024)  
[2025] KEHC 9972 (KLR) (Civ) (11 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 9972 (KLR)

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

**CIVIL**

**CIVIL APPEAL E556 OF 2024**

**AC MRIMA, J**

**JULY 11, 2025**

**BETWEEN**

**DR SELINA VUKINU AMBE ..... APPELLANT**

**AND**

**MONIQUE MWANIGA MUKAYAGI ..... RESPONDENT**

**RULING**

1. Through an application by way of Notice of Motion dated 5<sup>th</sup> March 2025 the Appellant/Applicant sought the following orders: -
  1. .... Spent
  2. .... Spent
  3. The Notice of appeal dated 5<sup>th</sup> March 2025 and filed on the same date to be deemed as having been filed within time.
  4. The Honourable court be pleased to order stay of execution of the judgment delivered on the 13<sup>th</sup> of February 2025 pending the hearing and determination of this Appeal.
  5. That costs of the application be in the cause.
2. The application was supported by the grounds on the face of it and the supporting affidavit of Selina Vukinu Ambe sworn on 5<sup>th</sup> March 2025. The Applicant averred that her failure to file the Notice of Appeal within time was occasioned by the delay in obtaining the judgment that was delivered on 13<sup>th</sup> February 2025. She averred that whereas the judgment was delivered on 13<sup>th</sup> February 2025, it was uploaded on the E-filing portal on 3<sup>rd</sup> March 2025 making it difficult for her to read the judgment and



file the Notice of Appeal within timelines. The Applicant, therefore, sought for extension of time to allow her file the Notice of Appeal as the appeal is arguable with high chances of success.

3. The application was strenuously opposed by the Respondent who filed Grounds of opposition dated 28<sup>th</sup> April, 2025. Her grounds for seeking that the application be dismissed are that: -
  1. The dismissal of the appellant's appeal is a negative order that is incapable of execution. There is nothing to stay.
  2. The intended appeal being a second appeal can only be based on point of law. The appellant has not argued or demonstrated that the learned judge erred in the application or interpretation of any law.
  3. The intended appeal is demonstrably frivolous and offends the principles of economical use of judicial resources litigation must come to an end.
  4. Further proceedings in this suit are prejudicial to the respondent who continues to incur costs while the appellant has not paid costs previously decreed against her.
4. Pursuant to the directions of this Court, the application was canvassed by way of written submissions. The Applicant's submissions were dated 27<sup>th</sup> March 2025. She relied on several decisions to buttress her argument that she had met the test/prerequisites for extension of time to file the appeal and further that she has met the threshold for grant of stay orders under Order 42 Rule 6(1) of the *Civil Procedure Rules*, 2010.
5. The Respondent, on the other hand, did not file any submissions.
6. Having considered the application, the Grounds of opposition, the written submissions and the decisions thereto, the issues that must fall for this Court's determination are: -
  - i. Whether the Applicant has met the threshold for extension of time to appeal out of time; and
  - ii. Whether the Applicant has met the threshold for grant of stay of execution.
7. This Court will now deal with the first issue on whether the Applicant has met the threshold for extension of time to file and lodge a Notice of Appeal out of time. The Court's jurisdiction is by virtue of Section 7 of the *Appellate Jurisdiction Act*, Cap. 9 of the Laws of Kenya which provides as follows: -
  7. Power of High Court to extend time  

The High Court may extend the time for giving notice of intention to appeal from a judgment of the High Court or for making an application for leave to appeal or for a certificate that the case is fit for appeal, notwithstanding that the time for giving such notice or making such appeal may have already expired.

Provided that in the case of a sentence of death no extension of time shall be granted after the issue of the warrant for the execution of that sentence.
8. The Supreme Court of Kenya in *Nicholas Kiptoo Korir arap Salat vs IEBC & 7 Others* (2014) eKLR, enunciated the principles applicable in an application for leave to appeal out of time. The Court stated inter alia that: -

The underlying principles a Court should consider in exercise of such discretion should include: -



- a. Extension of time is not a right of any party. It is an equitable remedy that is only available to a deserving party at the discretion of the Court;
  - b. A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the Court;
  - c. Whether the Court should exercise the discretion to extend time, is a consideration to be made on a case by case basis;
  - d. Whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the Court;
  - e. Whether there will be any prejudice suffered by the Respondent if the extension is granted;
  - f. Whether the application has been brought without undue delay.
9. Additionally, the Court of Appeal in *Paul Musili Wambua vs Attorney General & Others* (2015) eKLR held as follows in considering an application for extension of time and leave to file a Notice of Appeal out of time: -
- ...it is now settled by a long line of authorities by this Court that the decision of whether or not to extend the time for filing an appeal the Judge exercises unfettered discretion. However, in the exercise of such discretion, the Court must act upon reason(s) not based on whim or caprice. In general, the matters which a Court takes into account in deciding whether or not to grant an extension of time are; the length of delay, the reason for the delay, the chances of the appeal succeeding if the application is granted, the degree of prejudice to the respondent if the application is granted.
10. The Applicant gave her reasons on why she could not file the Notice of Appeal timeously. The said reasons were not controverted by any of the parties. To this Court, the reasons are holding. Consequently, the Notice of Appeal dated 5<sup>th</sup> March 2025 be and is hereby deemed as having been filed with the leave of this Court.
11. The second issue is whether Applicant has met the threshold for grant of stay of execution. The prerequisite conditions warranting a grant of stay of execution are outlined under Order 42 Rule 6 of the *Civil Procedure Rules* 2010 and may be summarized as follows: -
- a. That substantial loss may result to the Applicant unless the order is made;
  - b. That the application has been made without unreasonable delay; and
  - c. That security as the Court orders for the due performance.
12. In consideration of the above conditions alongside the fact that the Applicant's suit was dismissed with costs, it is apparent that the Respondent may proceed to tax the costs and move to levy execution. Given the nature of this matter, it is imperative that the Court of Appeal be accorded an opportunity to render on the main appeal. This is a case where a stay of execution ought to issue.
13. Having said as much, the following final Orders do hereby issue: -
- (a) The Notice of Appeal dated 5<sup>th</sup> March 2025 be and is hereby deemed to have been filed with the leave of this Court.



- (b) There be a stay of execution of the costs awarded to the Respondent in the suit pending the outcome of the appeal before the Court of Appeal.
- (c) The costs of the application herein to be in the appeal.

Orders accordingly.

**DELIVERED, DATED AND SIGNED AT NAIROBI THIS 11<sup>TH</sup> DAY OF JULY, 2025.**

**A. C. MRIMA**

**JUDGE**

Ruling virtually delivered in the presence of:

Ms Chimei, Learned Counsel for the Appellant

Amina/Abdirazak – Court Assistants.

