



**Amikoro Holdings Limited v Brinks Security Services (Miscellaneous Civil Application E799 of 2024) [2025] KEHC 10893 (KLR) (Civ) (2 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 10893 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
CIVIL  
MISCELLANEOUS CIVIL APPLICATION E799 OF 2024**

**JM OMIDO, J**

**JULY 2, 2025**

**BETWEEN**

**AMIKORO HOLDINGS LIMITED ..... APPLICANT**

**AND**

**BRINKS SECURITY SERVICES ..... RESPONDENT**

**RULING**

1. The Applicant's Notice of Motion dated 10<sup>th</sup> August, 2024 is expressed to be brought under Order 42 Rule 6 and Order 50 Rule 6 of the *Civil Procedure Rules* and Sections 1A, 1B, 3A, 63(e), 79G and 95 of the *Civil Procedure Act*, Cap 21 Laws of Kenya and all other enabling provisions of the law and seeks the following orders:
  - a. [Spent].
  - b. That the Honourable Court be pleased to grant the Applicant/Proposed Appellant leave to file an appeal out of time against the judgement delivered on 19<sup>th</sup> March, 2024 in SCCC No. E3128 of 2023 *Brinks Security Services v Amikoro Holdings Limited*.
  - c. [Spent].
  - d. That there be a stay of execution of the judgement and decree in Milimani SCCC No. E3128 of 2023 pending the hearing and determination of the intended appeal.
  - e. That the costs of this application abide be provided for.
2. The grounds upon which the application is premised are that the time within which to prefer an appeal from the matter before the lower court has since lapsed and the reason for the delay is explainable and



reasonable and that the Applicant stands to suffer immense prejudice if the order sought is not granted as its intended appeal is meritorious.

3. The application is supported by the affidavit sworn on 30<sup>th</sup> July, 2024 by Winnie Gikenyi, who describes herself as a Legal Officer at Africa Merchant Assurance Company Limited (AMACO), the insurer of the Applicant herein, liable to satisfy the judgement delivered in the case before the lower court.
4. The deponent to the supporting affidavit expounds on the above grounds and states that the reason for the delay in filing the Memorandum of Appeal was due to the fact that the instructing client (AMACO) delayed issuing instructions to its Advocates on record “due to pressure of work” and only sent the letter instructing its Advocates to appeal on 26<sup>th</sup> June, 2024, by which time the time within which to appeal had expired.
5. The said deponent further states on oath that it has a good appeal and that an order for stay of execution pending appeal should also be issued as it may not be able to recover the decretal amount from the Respondent in the event the intended appeal is successful, should the order for stay not issue. The deponent states that the Applicant is ready to furnish security for the performance of the decree, as may be ordered by the court.
6. The application is opposed by the Respondent who to that end filed a replying affidavit sworn on 30<sup>th</sup> September, 2024, by Joan Kibiku, a legal officer of the Respondent’s insurer.
7. The deponent of the replying affidavit states that the delay in filing the appeal is inordinate and has not been explained satisfactorily by the Applicant, and as such, the court should not grant leave to the Applicant to file its intended appeal out of time. She further states that the Applicant has not met the conditions requisite for the grant of an order for stay of execution pending appeal.
8. This court directed that the application proceeds by way of written submissions and the parties herein filed their respective submissions.
9. I have perused and considered the application, the Applicant’s affidavit in support thereof, the Respondent’s replying affidavit and the submissions of the parties. The application as filed is two pronged, as it seeks orders that:
  - a. The Applicant be granted leave to appeal out of time.
  - b. That there be a stay of execution pending the hearing and determination of the Applicant’s intended appeal.
10. What is clear from the record is that the judgement and decree from which the Applicant intends to appeal was delivered on 19<sup>th</sup> March, 2024. The application seeking for leave to appeal out of time, subject of which this ruling is made, was filed on 3<sup>rd</sup> September, 2024. The period within which to appeal lapsed on or about the 18<sup>th</sup> April, 2024. There is therefore a delay of a period of about four and a half months in bringing the application.
11. What this court should then proceed to determine is:
  - a. Whether the Applicant has met the prerequisites for the grant of leave to appeal out of time.
  - b. Subject to (a) above, whether the court should exercise its discretion to grant the Applicant leave to file its appeal out of time.

Subject to (a) and (b) above



- c. Whether the Applicant has met the prerequisites for the grant of an order of stay of execution pending the determination of the intended appeal.
12. Section 79G of the *Civil Procedure Act* provides as follows:
- 79G. 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 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.
13. It is clear from the text of the above provision of statute that before the court considers granting an order to allow an appeal to be filed out of time, the Applicant must demonstrate to the court that he has good and sufficient cause for filing the appeal out of time (see the cases of *Diplack Kenya Limited v William Muthama Kitonyi* [2018] eKLR and *Nicholas Kiptoo Korir arap Salat v IEBC and 7 Others* [2014] eKLR).
14. The Supreme Court in the case of *Salat (supra)* held 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; and
  - f. Whether the application has been brought without undue delay.
15. Whether there is a reasonable ground for the delay, the Applicant states that the instructions to its Counsel to file a Memorandum of Appeal were dispatched and/or issued late “due to pressure of work”. The Applicant did not explain or expound as to what amounted to “pressure of work” and how the same impeded the Applicant from issuing instructions to its Advocates, which in any event were in the form of a very brief one paged letter, as per the Applicant’s annexure WG-1.
16. Thus then, the delay by a lengthy period of about four and a half months, is not only inordinate, in the circumstances, but also remains unexplained therefore inexcusable.
17. In the obtaining situation, I will agree with the Respondent that the Applicant did not file the application that seeks the permission of the court to appeal out of time without unreasonable delay.



18. From the foregoing, I am not persuaded that the Applicant has met the prerequisites for leave to appeal out of time. Thus then, the court cannot judiciously exercise discretion to allow the Applicant appeal out of time.
19. Having determined that the prayer for leave to appeal out of time is not merited, I find it preposterous to determine the prayer that seeks an order for stay of execution pending the hearing and determination of the appeal that the Applicant intended to file.
20. The result I then reach, based on the reasons above, is that the Notice of Motion application dated 10<sup>th</sup> August, 2024 is without merit. I proceed to dismiss it with costs to the Respondent, which I assess at Ksh.8,000/-.

**DELIVERED (VIRTUALLY), DATED & SIGNED THIS 2<sup>ND</sup> DAY OF JULY, 2025.**

**JOE M. OMIDO.**

**JUDGE**

For Appellant: No appearance.

For Respondent: Ms. Njuguna.

Court Assistants: Mr. Ngoge & Mr. Juma.

