



**Jemutai v Vegpro Kenya Limited & another (Miscellaneous Civil Application  
E050 of 2025) [2025] KEHC 10784 (KLR) (24 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 10784 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KITALE  
MISCELLANEOUS CIVIL APPLICATION E050 OF 2025**

**RK LIMO, J  
JULY 24, 2025**

**BETWEEN**

**SARAH JEMUTAI ..... APPLICANT**

**AND**

**VEGPRO KENYA LIMITED ..... 1<sup>ST</sup> RESPONDENT**

**DANIEL SHIKANGA ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. Before me is an application dated 27/5/25 seeking mainly for leave to appeal out of time. The applicant also seeks for stay of execution of the ruling delivered on 14/2/25.
2. The grounds are listed as follows;
  - i. That the delay in lodging the appeal is purely inadvertent and excusable.
  - ii. That intended appeal has merit and stands high chances of success.
  - iii. That the setting aside of judgment affects the applicant's rights.
  - iv. That the applicant was incapacitated by sickness during Statutory period for filing the appeal.
  - v. That the intended appeal raises substantial question of law.
  - vi. That the delay in filing the appeal was not deliberate or inordinate but excusable in her view.
  - vii. That the respondent will not be prejudiced.
3. The applicant has sworn an affidavit dated 27/5/25 in support of this application.
4. She avers that the trial court set aside a judgment when the matter had been overtaken by events.



5. She further depones that she has been afflicted by ill health and has exhibited treatment notes to prove the fact adding that as a result of illness she lost touch with her advocate.
6. She prays for enlargement of time to enable her pursue an appeal stating she stands to suffer substantial loss if leave and stay are not granted.
7. The respondents have opposed this application through a replying affidavit sworn by Frankline Zenda on 5/6/25.
8. The respondents contend that there is no appeal preferred and that there is no basis upon which this court can exercise its appellate jurisdiction under Order 42 Rule 6 Civil Procedure Rules.
9. The respondents contend that the *ex parte* judgment was set aside in the lower court and that the respondents were granted time to file their defence. In their view there is nothing to stay and there is no basis to stay the proceedings.
10. They point out that the injuries pointed out by the applicant were sustained on 17/11/2023 and the medical documents filed show that the applicant went to hospital for “review” with no records of when she went to hospital for initial treatment.
11. This court has considered the application herein and grounds raised. I have considered the response.
12. Extension or enlargement of time is a discretionary matter. An applicant must demonstrate to court that there is basis for enlargement of time to take a necessary step in litigation. A court in exercising this discretion is guided by length of delay, reasons for delay and whether there is sufficient cause shown. What is imperative is that a court should be persuaded that it is in the interest of justice to enlarge time.
13. In this matter the main reason given for delay is sickness or incapacity. I have looked at the medical documents exhibited and they show that the applicant was in hospital on 20/2/25, 20/3/25 and 24/4/25. The documents indicate that the applicant was going to the medical facility for ‘review’ which is indicative of a continuous treatment or management of a medical condition. There is no record indicating that the doctor recommended a bed rest or off duty.
14. What is however significant is that the ruling for which the applicant seeks to appeal against was delivered on 14/2/25. There is no medical document indicative that she was incapacitated by illness that day or the following days until the 20<sup>th</sup> February 2025 when she attended hospital for a ‘review’ as per the medical chit exhibited.
15. The applicant also contends that she has high chances of success in the appeal but has not demonstrated the same in this application. She has just stated that she was aggrieved by the trial court’s decision to set aside an *ex parte* judgment. She further submits that the respondent would suffer no prejudice if the orders sought are given but this court is not persuaded that anyone would suffer prejudice by setting aside an *ex parte* judgment.
16. In the premises, this court finds no merit in the application dated 27/5/25. The same is disallowed with costs to the respondents.

**DELIVERED, DATED AND SIGNED AT KITALE THIS 24<sup>TH</sup> DAY OF JULY, 2025.**

**HON JUSTICE R.K. LIMO**

**KITALE HIGH COURT**

Ruling delivered in open court

In the presence of



M/s Nafula holding brief for Wekhomba for the Respondent

Songole holding brief for Teti for the Applicant

Duke/Chemosop- Court assistants

