



**Muyekho & 4 others v Karanga & 2 others (Civil Appeal
E036 of 2025) [2025] KEHC 10298 (KLR) (17 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 10298 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERUGOYA
CIVIL APPEAL E036 OF 2025
EM MURIITHI, J
JULY 17, 2025**

BETWEEN

**JENIFFER WAMUYU MUYEKHO 1ST APPELLANT
JOSEPHINE W KAMUNYORI 2ND APPELLANT
BERTH MUTHONI NGUYO 3RD APPELLANT
MARY MURANGI KAGO 4TH APPELLANT
RUTH WAMBUI MUCHIRA 5TH APPELLANT**

AND

**PETER KARANGA 1ST RESPONDENT
JOHN HARUN MUCHIRA 2ND RESPONDENT
ERNEST GITHINJI MUCHIRA 3RD RESPONDENT**

RULING

1. The applicant filed a Notice of Motion dated 24th March, 2025 seeking the following orders:
 1. Spent.
 2. Spent.
 3. Time for filing appeal against the order dated 19th November, 2024 be enlarged.
 4. Kerugoya HCCA/E036/2025 as filed out of time be admitted and validated as duly filed and served upon the respondents.
 5. Further proceedings in Kerugoya MCSUCC/102/2009 or execution of the order granted on 19th November, 2024 be stayed until this appeal is heard and determined on merit.



6. Costs of this application be provided for.
2. The application is based on the grounds on the face of the application and the supporting affidavit of the 4th appellant/applicant. The applicant's case is that the impugned ruling was delivered on 19th November, 2024. The thirty days within which to file appeal lapsed on 18th December, 2024. They did not file appeal against the impugned ruling on or before 18th December, 2024 for the reason that the ruling was delivered in their absence and their Advocate. They became aware of the impugned ruling on 10th March, 2025 and filed the appeal herein on 22nd March, 2025. Further, the appeal is not frivolous as it raises triable issues at law and has a high probability of success.
3. Lastly, if stay of further proceedings or execution of the order of 19th November, 2024 is not granted, the appeal will be rendered nugatory.
4. The respondent on 13th May, 2025 deposed to a Replying Affidavit where the respondent avers that the parties were aware and in fact the family held a number of meetings seeking to resolve a stalemate after the ruling was delivered. There has been inordinate delay since the judgment was delivered and the time of lodging of the appeal.
5. Further, the instant applicants have consciously delayed the lodging of this application to stall the execution of the orders sought in the judgment.
6. Lastly, the respondents will suffer prejudice if the application for stay and enlargement of time is granted because the succession cause has taken a protracted amount of time since the inception of the proceedings which was way back in 2009 and the delay has been caused by the instant applicants.

Applicant's submissions

7. In the instant case, going by the date of the subordinate court's Ruling of 19th November, 2024 there is delay in filing the appeal as it ought to have been filed on or before 18th December, 2024. That delay is explained to the honourable court on oath by Mary Murangi Kago.
8. The reason given for the delay is that both the Appellants/Applicants and their Advocate on record were not aware that the Ruling had been delivered as they were not served with notice for the same. The Appellants/Applicants' Advocate on record became aware of the same on 10th March, 2025, some four months after the ruling had been rendered and filed the appeal on 22nd March, 2025. The delay is therefore not inordinate and it is explained to the satisfaction of the honourable court.
9. On stay of execution the Appellants/Applicants' Memorandum of Appeal raises eight substantive grounds that are anchored on facts, the Constitution and the law. Suffice it that the Appellants/Applicants have demonstrated that they have an arguable Appeal with high chances of success. Hence, if stay of proceedings is not granted, the Appeal will be rendered nugatory.
10. In the case of Niazsons (K) Ltd. v China Road & Bridge Corporation (Kenya) [2001] eKLR it was held that:
11. Where the appeal may have very serious effects on the entire case so that if stay of proceedings is not granted the result of the appeal may well render the orders made nugatory and render the exercise futile, stay... should be granted.

Respondent Submission

12. There are no submissions on record.



Issue

13. Whether leave to appeal out of time should be granted.
14. Whether stay of execution should be granted.

Analysis

15. The Appellants/Applicants seek two substantive orders for wit enlargement of time for filing appeal against the order dated 19th November, 2024; admission of Appeal Case No. HCCA/E036/2025 that was filed out of time and its validation as duly filed and served upon the respondents; and stay of further proceedings in Succession Case No. MCSUCC/102/2009 at Kerugoya or the execution of the order granted on 19th November, 2024 until the appeal is heard and determined on the merits.

Whether leave to appeal out of time should be granted

16. The applicants urge the court to enlarge the time within which he may file an appeal against the ruling delivered on 19th November, 2024 in Kerugoya Succession Case No. MCSUCC/102/2009.
17. 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.
18. 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.
19. 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.

20. The applicants depose that they did not file appeal against the impugned ruling on or before 18th December, 2024 for the reason that the ruling was delivered in their absence and their Advocate. They became aware of the impugned ruling on 10th March, 2025 and filed the appeal herein on 22nd March, 2025.
21. The respondent avers that the parties were aware and in fact the family held a number of meetings seeking to resolve a stalemate after the ruling was delivered. There has been inordinate delay since the judgment was delivered and the time of lodging of the appeal.
22. Nevertheless, delay on the part of the applicant of 3 months to file the appeal is not inordinate.
23. Further, the applicant has an arguable appeal which need not be one that must eventually succeed as shown in the attached draft memorandum of appeal dated 21st March, 2025 which raised triable issues.



Whether stay of execution should be granted

24. The principles guiding the grant of a stay of execution pending appeal are well settled. These principles are provided for under Order 42 rule 6(2) of the Civil Procedure Rules which provides:
- “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.”
25. The Applicant depones that he will be prejudiced if this court was to deny him orders for stay of execution as the judgement is prejudicial and his intended appeal is arguable.
26. The respondents aver that the applicant has never complied with the court’s judgement despite being accommodative. They should be allowed the fruits of the judgment.
27. Nevertheless, the applicant undertakes to abide with conditional orders of stay of execution if any granted by the court. As regards provision of security, this being a succession cause, the status quo at the estate shall maintained and fall to be distributed in accordance with the final orders of the court.

Orders

28. Accordingly, for the reasons set out above, the Court finds merit in the application for leave to appeal out of time and stay of execution and it is allowed in the following terms:
1. The applicant is granted leave to file out of time.
 2. The Memorandum of Appeal shall be filed within seven (7) days.
 3. There shall be a stay of proceedings in Kerugoya CMCSUCC/102/2009 and stay of execution of the order of the Court made on 19th November, 2024 pending appeal on condition that the applicant files the Record of Appeal within thirty (30) days from today.
 4. In default, the stay orders granted herein will lapse and be of no effect.
29. In terms of Order 50 Rule 6 of the Civil Procedure Rules, the applicant shall pay the costs of the Application to the Respondent.

Order accordingly.

DATED AND DELIVERED THIS 17TH DAY OF JULY 2025.

EDWARD M. MURIITHI

JUDGE

Appearances

Mr. Gachuba for the Applicant.

Mr. Kamuga for the Respondent.

