



REPUBLIC OF KENYA



KENYA LAW
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**Mureti & another v Ngira (Miscellaneous Civil Application
E021 of 2025) [2025] KEHC 10562 (KLR) (15 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 10562 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
MISCELLANEOUS CIVIL APPLICATION E021 OF 2025**

**SM GITHINJI, J
JULY 15, 2025**

BETWEEN

WILFRED KIRIMI MURETI 1ST APPLICANT

TABITHA KABURO KABURU 2ND APPLICANT

AND

SEBIUS OKUMU NGIRA RESPONDENT

RULING

1. For determination is the Notice of Motion dated 10/3/2025 pursuant to Sections 1A, 1B, 3A, 79a & 95 of the [Civil Procedure Act](#), Order 50 Rule 6 of the [Civil Procedure Rules](#) and Article 50 of the [Constitution](#), seeking that:
 1. Spent
 2. This Honorable court be pleased to grant leave to the Applicants to file an appeal out of time in respect of the Judgment issued by Honorable trial Court on 22nd January 2025.
 3. Spent
 4. The Honorable Court be pleased to issue stay of execution pending hearing and determination of the intended appeal.
 5. The costs of this application abide the outcome of the appeal.
2. The application is predicated on the grounds that the appeal has high chances of success, and the delay in filing it within the stipulated time was occasioned by the late supply of the typed proceedings by the trial court, and unless the orders sought herein are granted, the Applicants will suffer irreparable loss and damage. The application has been brought without inordinate delay and no prejudice will be suffered by the Respondent if the same is allowed.



3. The Respondent swore a replying affidavit on 1/4/2025 in opposition to the application. He denied the contention that the Applicants had problems obtaining the judgment because it was uploaded in the CTS immediately after delivery, and thus the delay in filing this application has not been satisfactorily explained. He implored the court to balance the Applicants' right of appeal against his right to enjoy the fruits of his judgment so as to avoid any prejudice to any party. According to him, the Applicants have neither shown what substantial loss they would suffer if stay is denied nor offered any security for the due performance of the decree. He urged the court to dismiss the application with costs because no case had been made for extension of time and stay of execution.
4. The 1st Applicant swore a supplementary affidavit on 16/5/2025 in support of the application.
5. The application was canvassed by way of written submissions which were duly filed by counsel.

Determination

6. The singular issue for determination is whether the orders sought should be granted.
7. The underlying principles that a court should consider in the exercise of its discretion to extend time were underscored by the Supreme Court in *Nicholas Kiptoo Korir Arap Salt v Independent Electoral & Boundaries Commission & 7 others* (2014) eKLR, as follows; "1. Extension of time is not a right of a party. It is an equitable remedy that is only available to a deserving party at the discretion of the Court; 2. A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the court; 3. Whether the court should exercise the discretion to extend time, is a consideration to be made on a case to case basis; 4. Whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the Court; 5. Whether there will be any prejudice suffered by the respondents if the extension is granted; 6. Whether the application has been brought without undue delay; and 7. Whether in certain cases, like election petitions, public interest should be a consideration for extending time."
8. The instant application was filed on 10/3/2025 while the impugning judgment was delivered on 22/1/2025. The delay in filing the application timeously is attributed to the belated supply of the certified proceedings and the judgment by the trial court. The Applicants requested for the certified proceedings and a copy of the judgment on various occasions as evidenced by the exhibited letters dated 22/1/2025 and 20/2/2025. I find that the delay in filing the application has been sufficiently explained to the satisfaction of the court.
9. It is clear from the grounds of appeal raised in the annexed memorandum of appeal, challenging inter alia the trial court's apportionment of liability at 80:20 and award of general damages of Kshs 2,000,000, that the appeal is indeed arguable.
10. The Respondent has not disclosed what prejudice he will suffer if leave to appeal out of time is granted, and I thus deem it fit to grant the extension sought.
11. On stay of execution, Order 42 Rule 6 (2) of the *Civil Procedure Rules* provides as follows; "No order for stay of execution shall be made under subrule (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."
12. I am guided by the holding of the Court of Appeal in *Butt v Rent Restriction Tribunal* [1979] eKLR that; "It is in the discretion of the court to grant or refuse a stay but what has to be judged in every case is whether there are or not particular circumstances in the case to make an order staying execution. It



has been said that the court as a general rule ought to exercise its best discretion in a way so as not to prevent the appeal, if successful from being nugatory, per Brett, LJ in *Wilson v Church (No 2)* 12 Ch D (1879) 454 at p 459.”

13. As noted above, the delay in filing this application has been sufficiently explained to the satisfaction of the court. It is my considered view that unless the stay sought is granted, the Applicants will suffer substantially if they pay the decretal sum to the Respondent and their appeal eventually succeeds.
14. In a bid to balance the Applicants’ undoubted right to appeal against the Respondent’s right to enjoy the fruits of his lawful decree, I will grant stay of execution on conditions that I will set out hereinbelow.
15. Consequently, I find that the application dated 10/3/2025 is merited and it is allowed in the following terms;
 1. The Applicants are granted 14 days leave to appeal out of time in respect of the Judgment delivered on 22nd January 2025.
 2. Stay of execution of the judgment delivered on 22nd January, 2025 is hereby granted, pending the hearing and determination of the intended appeal herein, on condition that;
 - i. The Applicants pays to the Respondent the sum of Kshs 600,000 within 30 days from the date hereof.
 - ii. The Applicants to compile, file and serve the Record of Appeal within 45 days from the date hereof.
 - iii. In default of any of the aforementioned conditions, the stay hereinabove granted shall lapse and the Respondent shall be at liberty to execute.

DATED AND DELIVERED AT MERU THIS 15TH JULY, 2025

S.M. GITHINJI

JUDGE

Appearance:-

Ms. Kerubo holding brief for Mr. Kiautha for the Applicant.

Ms. Gacheri holding brief for Nkunja for the Respondent.

