



**Sidede t/a Jobefer Medical Services v Evangelical Lutheran Church
in Kenya Registered Trustees (Civil Miscellaneous Application
E074 of 2025) [2025] KEHC 12643 (KLR) (17 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 12643 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
CIVIL MISCELLANEOUS APPLICATION E074 OF 2025
A MABEYA, J
SEPTEMBER 17, 2025**

BETWEEN

**BEATRICE ACHIENG SISEDE T/A JOBEFER MEDICAL
SERVICES APPLICANT**

AND

**EVANGELICAL LUTHERAN CHURCH IN KENYA REGISTERED
TRUSTEES RESPONDENT**

RULING

1. This is a ruling on the Motion on Notice dated 5/5/2025 by the applicants. The same was made under sections 1A, 1B and 3A of the Civil Procedure Act, Orders 42 Rule 6 and 51 Rules 1 of the Civil Procedure Rules.
2. The Motion sought a stay of execution of the Judgment of the trial court made on 3/5/2025 and leave to appeal against that judgment out of time. The grounds thereof were set out in the body of the Motion and the Supporting affidavit of Beatrice Achieng Sidede sworn on 5/5/2025.
3. The grounds were that; the respondent had obtained warrants of arrest against the applicant on 24/1/2024. That consequently, the applicant filed an application dated 5/7/2024 seeking to stay, review and set aside the same. That a ruling was made on 3/4/2025 disallowing her application and reissuing warrants o arrest against her. That due to lack of funds, she failed to file her appeal on time. That the appeal raises triable issues that she should be allowed to ventilate on appeal. That the appeal had high chances of success and may be rendered nugatory unless the orders sought were granted.
4. The application was opposed vide the grounds of opposition dated 8/5/2025 and a replying affidavit of George Otieno Ochich sworn on 12/5/2025.



5. In his grounds of opposition, the respondent contended that; the applicant had approached court with unclean hands as she had refused to settle the debt since 2021. That the application was made out of bad faith to delay/avoid settling the debt owing. That the application prejudices the respondent. That application had not met the threshold for an order of stay of execution. The aforementioned grounds were further buttressed in the respondent's replying affidavit.
6. I have considered the record and the respective parties' contestations. This is an application for leave to appeal out of time and consequently grant a stay of execution.
7. The applicant did not invoke the jurisdiction of this Court for extension of time for filing an appeal. The provisions of the law cited by the applicants in the Motion do not provide for the prayer for extension of time. However, by dint of Order 51 Rule 10 of the Civil Procedure Rules and section 3A of the Civil Procedure Act, I do excuse the failure to cite the correct provision.
8. The jurisdiction to extend time for filing an appeal out of time is to be found in the proviso to section 79G of the Civil Procedure Act. The section provides: -

“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.”
9. An application for extension of time is discretionary. But it must be exercised within certain parameters. In deciding whether to grant an extension of time or not, the Court will consider the length of the delay, the reason for the delay, the degree of prejudice to be suffered by the opposite party and probably, the chances of success of the appeal if the application is granted. See *Thuita Mwangi –vs- Kenya Airways 2003) eKLR*.
10. On the length of time, the impugned ruling was delivered on 3/4/2025. The appeal was supposed to be filed by the 5/5/2025. However, the present application was made on 6/5/2025 a day out of time. Accordingly, the application was lodged timeously.
11. As to the reason for the delay, in the body of the Motion, the applicant stated in ground No. (d) of the Motion that: -

“The said delay has been occasioned by the applicant's lack of funds to avail fees for filing this appeal and the subsequent application.”
12. The applicant herein has not adduced any evidence of her purported lack of funds to support her allegations. It is not clear why there were funds only after the lapse of the time for filing.
13. Regarding the principle whether or not the intended appeal is of arguable nature, from a perusal of the draft memorandum of appeal annexed to the Motion, it is clear that the same is challenging the finding by the trial court primarily arguing that the said court did not consider the evidence tendered on behalf of the applicant.
14. Considering the nature of the appeal but without delving into the merits thereof at this stage, the Court is not satisfied that it contains arguable grounds. This is so because, the applicant only seeks to forestall the execution of arrest warrants issued against herself that emanate from a consent judgment.



15. As to the degree of prejudice to be suffered by the opposite party, it is noteworthy that the warrants of arrest sought to be stalled by the applicant and which were reinforced by the trial court emanated from a consent dated 12/7/2022 that was adopted as an order of the court. The same allowed the applicant to pay the decretal sum by way of instalments of Kshs 40,000/- every successive month. Accordingly, it is the respondents who are prejudiced and deprived of their right to enjoy the fruits of their judgment.
16. In view of the foregoing, the Court is not satisfied to exercise its discretion in favour of the applicant on the subject of leave to appeal out of time.
17. The applicant also seeks a stay of execution pending the appeal. It is trite law that a court has the discretion to grant an order for a stay of execution of a decree or order pending appeal. The same however, ought to be exercised judiciously. See *Butt v Rent Restriction Tribunal* [1979 KECA 22 KLR.
18. Order 42, Rule 6 of the Civil Procedure Rules stipulates that: -

“(1) No appeal or second appeal shall operate as a stay of execution or proceedings under a decree or order appealed from except appeal case of in so far as the court appealed from may order but, the court appealed from may for sufficient cause order stay of execution of such decree or order, and whether the application for such stay shall have been granted or refused by the court appealed from, the court to which such appeal is preferred shall be at liberty, on application being made, to consider such application and to make such order thereon as may to it seem just, and any person aggrieved by an order of stay made by the court from whose decision the appeal is preferred may apply to the appellate court to have such order set aside.

(2) 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”.

19. I have already found that the application was brought timeously. The second condition for consideration is whether the applicant has demonstrated the likelihood of suffering substantial loss if a stay is denied. In *Kenya Shell Ltd v Kibiru & Another* [1986] KLR 410, the Court of Appeal held: -

“Substantial loss in its various forms is the cornerstone of both jurisdictions for granting stay. That is what has to be prevented...”

In considering an application for stay, the Court doing so must address its collective mind to the question of whether to refuse it would render the appeal nugatory. In applications for stay, the Court should balance two parallel propositions, first that a litigant, if successful should not be deprived of the fruits of a judgment in his favour without just cause and secondly that execution would render the proposed appeal nugatory. In this case, the refusal of a stay of execution would not render the appeal nugatory, as the case involved a money decree capable of being repaid.”



20. In the present case, the applicant has not demonstrated that she stands to suffer substantial loss. As stated herein earlier, the applicant seeks to stay execution of warrants of arrest emanating from a consent order that she wilfully entered to. The applicant has always known that she was supposed to settle the decretal amount since 2022 and has not undertaken any action to settle the same.
21. As regards security, the applicant did not offer any security for the performance of the decree that may ultimately be found binding on her. The law is clear that the provision of security is a mandatory condition for granting a stay of execution.
22. In the circumstances, I find that the applicant has not satisfied the requirements for grant of stay of execution provided in Order 42 Rule 6 of the Civil Procedure Rules
23. Accordingly, the Court finds the application dated 5/5/2025 to be without merit and dismisses the same with costs.

It is so ordered.

DATED AND DELIVERED AT KISUMU THIS 17TH DAY OF SEPTEMBER, 2025.

A. MABEYA, FCI Arb

JUDGE

