



**Karimi & another (Suing as legal representatives of the Estate of David Kiere Ndiritu - Deceased)  
v King'ori (Civil Appeal E004 of 2021) [2024] KEHC 9232 (KLR) (18 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 9232 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NYERI  
CIVIL APPEAL E004 OF 2021  
DKN MAGARE, J  
JULY 18, 2024**

**BETWEEN**

**ANN WANGARI KARIMI & PHILIP KING'ORI NDIRITU (SUING AS  
LEGAL REPRESENTATIVES OF THE ESTATE OF DAVID KIERE NDIRITU -  
DECEASED) ..... APPLICANT**

**AND**

**JOSEPH KABUGI KING'ORI ..... RESPONDENT**

**RULING**

1. The application seeks leave to appeal out of time and stay pending appeal. The application is not opposed. The court has to consider the application on its merit nevertheless.
2. The Notice of Appeal was filed out of time. It is sought to validate the same. Court has powers to grant leave to file an appeal out of time. However there must be:
  - a. Explanation for the delay.
  - b. Delay is not inordinate.
3. In this case the delay was not inordinate. The file was transmitted from Mombasa, where the court was sitting. There is a likelihood of some delays. This is so in this case where there was a change of advocates. I am satisfied with the explanation given.
4. However, I cannot validate an invalid notice. I therefore direct that a Notice of Appeal be filed within 14 days from today.
5. Secondly Order 42 Rule 6 requires that the following conditions be met before stay is granted:
  - i. Security
  - ii. Irreparable loss.



6. In this case, the Respondent has already conceded. Therefore, it is an admission of loss. The Applicant has offered security.
7. In the circumstances I allow the application for stay pending appeal.

#### **Determination**

- a. Leave is granted to the Respondent to appeal to the Court of Appeal out of time. The Respondent/Applicant to file Notice of Appeal within 14 days from today.
- b. There be stay of execution pending appeal on condition that the Respondent/Applicant deposits in a joint interest earning account by 30/8/2024 a sum of Kshs. 2,528,560/= as security. In default of so doing execution do issue.
- c. The file is closed.

**DELIVERED, DATED AND SIGNED AT NYERI ON THIS 18TH DAY OF JULY, 2024.**

Ruling delivered through Microsoft Teams Online Platform.

**KIZITO MAGARE**

**JUDGE**

In the presence of:-

Miss. Abodo for the Respondent/Applicant

Ms. Onyango for the Appellant/Respondent

Court Assistant – Jedidah

