



REPUBLIC OF KENYA



**Osoro v George & another (Miscellaneous Application  
48 of 2023) [2024] KEHC 7883 (KLR) (2 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 7883 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MALINDI  
MISCELLANEOUS APPLICATION 48 OF 2023**

**SM GITHINJI, J**

**JULY 2, 2024**

**BETWEEN**

**PAULINE OSORO ..... APPELLANT**

**AND**

**DICKSON KATANA GEORGE ..... 1<sup>ST</sup> RESPONDENT**

**ESTHER NJERI MBUGUA ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. Spent.
  2. That this Honourable court be pleased to order stay of execution of the judgment of the Honourable principal magistrate's court at Kilifi in cmcc No. E14 of 2021 delivered on 19.04.2023 by the Honourable J.M Kituku (Cm), Chief Magistrate pending the hearing and determination of the intended appeal.
  3. That this Honourable court be pleased to grant the Applicant leave to file an appeal out of time.
  4. That as a condition for stay of execution pending the hearing and determination of this appeal/intended appeal, this Honourable court be pleased to direct that the Applicant/Appellant be and is hereby ordered to provide/issue security for the entire decretal sum/amount in the form of a Bank guarantee to be issued by Family Bank Limited.
  5. Costs of this application abide by the outcome of the appeal.
1. The application is founded on the grounds set out on its face and the supporting affidavit of Pauline Osoro the Applicant who deponed that she is the insured of motor vehicle registration number KAT 901V and that she was aware that judgment was delivered on 19<sup>th</sup> April 2023 wherein a 30 days



stay of execution was granted but has since lapsed. She stated that judgment was entered in favour of the respondent. That upon following up for a copy of the judgment, the handwritten copy was illegible and when she finally got the typed copy, the quantum was excessively high and liability assessed irregularly thus instructing her advocates to file an appeal. She stated that her advocates without unreasonable delay, drafted a copy of memorandum of appeal on which the intended appeal is founded. She additionally stated that the court be pleased to direct that the entire decretal sum be fully secured through a Bank Guarantee without partial payments/settlements being made.

2. The 1<sup>st</sup> Respondent filed a replying affidavit stating that the application lacks merit. Further that the Applicant has failed to demonstrate how she will suffer substantial loss if stay is not granted. Additionally, that the Applicant has failed to meet the threshold under Order 42 Rule 6 of the *Civil Procedure Rules*.

### **Disposition**

3. The application was disposed of by way of written submissions. I have considered the submissions by the parties as well as the authorities relied upon. The issues for determination are; whether the orders sought for stay of execution and the order sought for enlargement of time are merited.
4. The Applicant's prayer to file appeal out of time can only be granted if she satisfies the court that she had good and sufficient cause for not filing the appeal on time. The Supreme Court of Kenya in the case of *County Executive of Kisumu vs County Government of Kisumu & others [2017] eKLR* while relying to its decision in the case of *Nicholas Kiptoo Arap Korir Salat vs IEBC & 7 others Application No. 16 of 2014 [2014] eKLR* the Hon. Judges reiterated the considerations to be made in such a case to be 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."
5. The Applicant has a duty to explain to this court why she did not file this application after judgment was delivered on 19/04/23. According to the Applicant, the delay was occasioned by failure to obtain a copy of the judgment on time and that the handwritten copy was illegible. The instant application was filed on 26th July 2023 more than two months after the delivery of the said Judgment. In my view, the explanation is not satisfactory as there's no sufficient cause as to why the Applicant waited for more than two months after the judgment had been delivered to bring the instant application. Further, there is no certificate of delay accompanying the application to demonstrate that indeed the delay cannot be



blamed on the Applicant. It follows that the prayer for leave to appeal out of time fails and the same is hereby disallowed.

6. As regards stay of execution, having found that the prayer for leave to appeal out of time is not merited, then it follows that an order for stay of execution cannot issue. The reasoning is that the prayer for stay has no legs on which to stand on.
7. In the end, the Notice of Motion dated 26<sup>th</sup> June 2023 fails for want of merit and the same is hereby dismissed with costs to the Respondents.

**RULING READ, SIGNED AND DELIVERED VIRTUALLY AT MALINDI THIS 2<sup>ND</sup> DAY OF JULY, 2024.**

**S.M. GITHINJI**

