



REPUBLIC OF KENYA



KENYA LAW
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**Wambui v Maina (Civil Appeal E189 of 2022)
[2023] KEHC 3906 (KLR) (Civ) (2 May 2023) (Ruling)**

Neutral citation: [2023] KEHC 3906 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

CIVIL APPEAL E189 OF 2022

JN MULWA, J

MAY 2, 2023

BETWEEN

TABITHA NGANGA WAMBUI APPLICANT

AND

JAMES MAINA RESPONDENT

RULING

1. There are two applications filed by the applicant dated 22/06/2022 and 27/06/2022.
By the motion dated 22/06/2022, the applicant sought a myriad of orders summarized in to two:
 1. An order of stay of execution of judgment delivered on the 16/07/2021 by the trial court in Milimani CMCC No. 4825 of 2009 pending hearing and determination of the application and eventually the appeal, including the arrest of warrants of attachment dated 21/06/2022, and
 2. Stay of proceedings in the lower court.
2. On the 30/06/2022, the applicant was granted a conditional stay order upon depositing the decretal sum into court within 15 days. The order was complied with but not within the timeframe stipulated by the court.
3. By the Motion dated 27/05/2022 the applicant sought the same orders in the application dated 22/06/2022; save for adding one more: leave to file the appeal out of time, and for the Memorandum of Appeal dated 24/03/2022 to be deemed as properly filed and on record.
4. Anertia Salinder Gulenywa Advocate swore the supporting affidavits in both applications. The applications are opposed by replying affidavits sworn by one Priscillah Wangui Githaiga in both applications. The parties then filed written submissions which the court has carefully considered.



5. The issues that fall for determination in the courts now are two fold;
 - a. Whether the applicant should be granted leave to file an appeal out of time; and
 - b. Whether an order of stay of execution of the trial court's judgment should be granted pending hearing and determination of the intended appeal.
6. The Judgment of the trial court was delivered on the 16/07/2021 whereof the applicant then defendant was held wholly liable for the accident, subject of the suit, and condemned to pay general and special damages of Kshs. 380,000/- plus costs.

In compliance with conditional stay orders, the applicant deposited the decretal sum into court.

Whether extension to file Appeal out of time should be granted.

7. I have perused the supporting affidavit searching for reasons for the delay. I have not seen any at all; save that the decretal sum was deposited into court on the 17/06/2022.

Section 79G of the [Civil Procedure Act](#) provides for 30 days upon which an appeal may be filed from the subordinate court.

However, the proviso thereto allows an appeal to be filed out of time if the applicant satisfies the court that there are good and sufficient cause for the delay.

8. The delay in this matter is well over one year, and no explanation has been offered.

9. In [Mutiso v Mwangi](#) [1997] KLR 630, the Court of Appeal rendered that,

“It is now settled that the decision whether to extend time for appealing is essentially discretionary. It is also well settled generally, that the matters which this court takes into account in deciding whether or not to grant an extension of time are: -

The length of the delay, secondly, the reason for the delay; thirdly (possibly) the chances of appeal succeeding if application is granted, and fourthly, the degree of prejudice to the Respondent if the application is granted.”

10. The Supreme Court of Kenya reiterated the above in the case of [Nicholas Kiptoo Korir v. IEBC & 7 Others](#) [2014] eKLR and emphasized that a party who seeks extension of time has the burden of laying a basis to the satisfaction of the court, and whether the delay has been explained to the satisfaction of the court, and whether the application has been brought without unreasonable delay.

11. Without belabouring further, the applicant has failed to satisfy the court of any of the above parameters, not even that the intended appeal has any chances of success. Depositing the decretal sum into court is not a reason for the courts consideration in regard to the orders sought.

I am therefore not persuaded to exercise my discretion to extend time to file appeal out of time. See also [Anna Mwihaki Wairimu v Hannab Wanja Wairimu](#) (2017) eKLR; [Leosila Mutiso v Rose Hellen Wangari Mwangi](#) [2020] eKLR among others.

12. Having held as above, the second issue; whether the applicant should be granted orders of stay of execution pending hearing and determination of the appeal fall by the way.
13. Consequently, the applicant's applications dated 22/06/2022 and 27/06/2022 are hereby dismissed with costs to the Respondent.



The decretal sum deposited in court by the Applicant shall be released to the Respondent's Advocates Githaiga P. W. & Company Advocates for onward transmission to the Respondent

Orders accordingly.

DELIVERED, DATED AND SIGNED AT NAIROBI THIS 2ND DAY OF MAY, 2023

J. N. MULWA

JUDGE

