



**Okinyi v Njue (Miscellaneous Civil Case E003 of 2024)
[2024] KEHC 15584 (KLR) (4 December 2024) (Ruling)**

Neutral citation: [2024] KEHC 15584 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KILGORIS
MISCELLANEOUS CIVIL CASE E003 OF 2024
F GIKONYO, J
DECEMBER 4, 2024**

BETWEEN

JACKLINE OKINYI APPLICANT

AND

MARGARET MUTHONI NJUE RESPONDENT

(Being an application for leave to appeal out of time and stay of execution of the judgment and decree of Hon. W. C. Waswa (S.R.M) dated 30/05/2024 in Kilgoris PMCC No. E029 of 2022)

RULING

Leave to appeal out of time and stay of execution

1. The major orders sought in the chamber summons dated 24/07/2024 are: a) leave to appeal out of time and; b) stay of execution of the judgment and decree of Hon.W.C. Waswa (S.R.M) dated 30/05/2024 in Kilgoris PMCC No. E029 of 2022.
2. The application is premised on sections 1A, 3A, and 79G of the [Civil Procedure Act](#), and article 59 of [the Constitution](#).
3. The application is based on the grounds set out in the face of the application and the supporting affidavit of Jackline Okinyi sworn on 24/07/2024.

Background of the application

4. Judgment was entered in favour of the respondent on 30/05/2024. The applicant being aggrieved by the decision of the trial court intends to appeal against the said decision.
5. The applicant was unable to lodge her memorandum of appeal as her former advocates did not communicate the delivery of the judgment to her on time. She only came to learn of the judgment after 30 days allowed for appeal had lapsed.



The response

6. The respondent has not filed any replies.

Analysis And Determination

Issues

7. This court has considered the applications dated 24/07/2024, and the annexures thereto.
8. Arising therefrom are the main issues:
 - i. Whether leave to appeal out of time should be granted.
 - ii. Whether stay of execution is merited.

Leave to appeal out of time: the law.

9. The court may, where it is satisfied that the applicant had good and sufficient cause for not filing appeal in time.
10. The discretion is, however, exercised judicially; the court considering such matters as, but not limited to; the length of delay, the reason for the delay, the chances of the appeal succeeding if the application is granted, the degree of prejudice to the respondent if the application is granted. *Diplack Kenya Limited vs William Muthama Kitonyi* [2018] eKLR, *Paul Musili Wambua vs Attorney General & 2 Others* [2015] eKLR, and *Nicholas Kiptoo Korir arap Salat vs IEBC and 7 Others* [2014] eKLR
11. Applying the above principles to the present case, the judgment herein was delivered on 30/05/2024 and the applicant filed the current application on 31/07/2024. This is about 30 days outside the time limit for filing an appeal. The applicant has attributed the delay in filing appeal to lack of communication from her advocate in time.
12. Thirty (30) days cannot be termed as an inordinate delay.
13. The reason for the delay has been satisfactorily explained to the court. The applicant shall file appeal in 14 days of today.

Stay of execution

14. Under order 42 rule 6 of the CPR, inter alia, the Applicant must show that, she stands to suffer substantial loss if the orders are not granted.
15. In the instant case, the court made an order dismissing the Applicant's case with costs which is a negative order incapable of being stayed. *Western College Farts and Applied Sciences vs. Oranga & Others* [1976] KLR 63.
16. There is also nothing to show that costs have been taxed or any danger of execution for costs.
17. The Applicant has not demonstrated that she stands to suffer any loss, substantial or otherwise if the order of stay of execution pending appeal is not granted.

Conclusion and orders

18. In the upshot: -



- a. Prayer for stay of execution of the decree/judgment in Kilgoris PMCC No E029 of 2022 delivered on 30/05/2024 is declined.
- b. The Applicant is granted leave to file an appeal out of time against the judgment in Kilgoris PMCC No E029 of 2022 delivered on 30/05/2024 within 14 days of today.
- c. The costs of the application shall abide by the outcome of the appeal.

19. It is so ordered.

**DATED, SIGNED, AND DELIVERED AT KILGORIS THROUGH TEAMS APPLICATION, THIS
4TH DAY OF DECEMBER, 2024.**

F. GIKONYO M

JUDGE

In the presence of: -

Kiprotich for Kipkoech for applicant

Nyangaresi C/A

