



**Gathirwa & another v Chege (Miscellaneous Civil Application E009 of 2025)
[2025] KEHC 13462 (KLR) (Civ) (30 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 13462 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CIVIL
MISCELLANEOUS CIVIL APPLICATION E009 OF 2025
AC MRIMA, J
SEPTEMBER 30, 2025**

BETWEEN

DAVID MWAURA GATHIRWA 1ST APPLICANT

PETER GICHERU WARUI 2ND APPLICANT

AND

LILIAN WANGARI CHEGE RESPONDENT

RULING

1. By a Notice of Motion dated 16th April 2025, the Applicants sought the following orders: -
 1. That this matter be certified as urgent and service thereof be dispensed with in the first instance.
 2. That this Honourable Court be pleased to grant a temporary stay of execution of the Judgment and Decree delivered on 6th December, 2024 at Milimani Commercial Courts CMCC E126 of 2023 pending the hearing and determination of this application.
 3. That this Honourable Court be pleased to grant a temporary stay of execution of the Judgment and Decree delivered on 6th December, 2024 in Milimani Commercial Courts CMCC E126 of 2023 pending the hearing and determination of the Applicant's prospective Appeal in the matter.
 4. That this Honourable Court be pleased to enlarge the time within which the Applicants may file an Appeal against the Judgment delivered on 6th December 2024 and consequently grant leave to the Applicants to file its Appeal in terms of the annexed Memorandum of Appeal marked A.



5. That this Honourable Court be pleased to order that the firm of Kiarie Kariuki & Associates Advocates be entered on record for the Applicants.
6. That the costs of this Application be in the cause.
2. The application was premised on the grounds on its face, the Affidavit evenly sworn by Edinah Masanya, a Legal officer to the Applicant's insurers and the written submissions dated 16th May 2025. The application was opposed by the Respondent through a Replying Affidavit sworn on 13th May 2025 and as well as written submissions.
3. The Applicants averred and submitted that the delay in lodging the appeal timeously was occasioned by the insurers who had instructed its former Advocates to undertake post-judgment negotiations and possibly settle the matter without the necessity of filing an appeal. That, the negotiations did not end well, hence, the need to lodge an appeal. According to the Respondents, all issues raised by the Applicants were resolved including by the trial Court and the only issue remaining was to file a written consent when the insurers retracted its position on the entire process and changed Advocates with instructions to lodge an appeal out of time. To the Respondent, the Applicants were just about, but buying time and urged this Court to disallow the application.
4. This Court has carefully considered the application, the response and the submissions including the decisions referred to therein. The Court has also considered various decisions on the subject of appeal out of time and stay of execution. There is no doubt that the parties engaged into post-judgment negotiations. Whereas the Applicants alleged that the negotiations did not yield any positive fruits, the Respondent, through her Replying Affidavit, expounded on all the activities undertaken upon by the parties to the point that a settlement consent was to be filed. The Applicants, however, did not file any further disposition disputing that averment. Therefore, this Court affirms the position that the parties engaged into post-judgment negotiations and reached a settlement and that the Applicants' change of heart can only be in bad faith and with a view to delay the matter.
5. This Court, therefore, finds no merit in the application and makes the following final orders: -
 - (a) The Notice of Motion dated 16th April 2025 is hereby dismissed with costs.
 - (b) The costs are hereby assessed at Kshs. 30,000/= [Thirty Thousand Only] to be paid within 14 days of this order and in default execution to issue.

Order accordingly.

DELIVERED, DATED AND SIGNED AT NAIROBI THIS 30TH DAY OF SEPTEMBER, 2025.

A. C. MRIMA

JUDGE

Ruling virtually delivered in the presence of:

Mr. Diru, Learned Counsel for the Applicants.

Miss. Mwangi, Learned Counsel for the Respondent.

Michael/Amina – Court Assistants.

