



REPUBLIC OF KENYA



KENYA LAW
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**Muchoki v Muthoni (Civil Appeal E007 of 2025)
[2025] KEHC 13725 (KLR) (3 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 13725 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CIVIL APPEAL E007 OF 2025
DO CHEPKWONY, J
SEPTEMBER 3, 2025**

BETWEEN

JOHN MUCHOKI APPELLANT

AND

MARK KARIUKI MUTHONI RESPONDENT

*(Being an Appeal from the whole Judgment of the Small Claims Court of Kenya at Ruiru
(Hon. Tawai Kacklyne Khalimesi) dated 25th November, 2024 in SCCOMM. No.E624 of 2024)*

RULING

1. This is a ruling in respect of a Notice of Motion application dated 17th January, 2025, in which the Applicant seeks the following orders:-
 - a. Spent.
 - b. Spent.
 - c. That there be stay of execution of the Judgment and decree issued by the Small Claims Court at Ruiru in SCCOMM E624 of 2024 pending the hearing and determination of the appeal filed herein.
 - d. That this Honourable Court be pleased to extend the time for filing the appeal out of time and the Memorandum of Appeal annexed hereto be deemed as duly filed upon payment of the requisite fees.
 - e. That the costs of the application be in the cause.
2. The Application is based on the grounds set out on its face and the Supporting Affidavit of John Muchoki sworn on even date.



3. The Respondent opposed the application through his Replying Affidavit sworn on 24th February, 2025 claiming that the application is an afterthought, vexatious, abuse of court process which should be dismissed.
4. The court directed the application to be canvassed by way of written submissions and the Applicant filed his submissions dated 9th April, 2025 while the Respondent's submissions are dated 24th March, 2025, both for the court's consideration.

Analysis and Determination

5. In considering the Notice of Motion application, the court has read through the Replying Affidavit, the Supporting Affidavit alongside the written submissions and cited law by either party. The court finds that the main issues for determination are:-
 - a. Whether the time within which to file an appeal herein can be extended.
 - b. Whether an order for stay of execution can be granted.
6. In regard to the issue on leave to appeal out of time, the law under Section 79G of the *Civil Procedure Act* provides that:-

“Every appeal from a subordinate court to the High Court shall be filed within a period of thirty days from the date of the decree or order appealed against, excluding from such period any time which the lower court may certify as having been requisite for the preparation and delivery to the appellant of a copy of the decree or order:

Provided that an appeal may be admitted out of time if the appellant satisfies the court that he had good and sufficient cause for not filing the appeal in time.”
7. From this provision, it is trite that an appeal to this court ought to be filed within thirty (30) days from the date of a decree or order which period may be enlarged if court is satisfied that a party has demonstrated good and sufficient cause as to why the appeal could not be filed within the prescribed period.
8. The Court of Appeal in the case of *Edith Gichungu Koine –vs- Stephen Njagi Thoitthi* [2014] eKLR and also in the case of *Thuita Mwangi v. Kenya Airways Ltd* [2003] eKLR, addressed the factors which a court ought to consider in determining whether or not to grant a party leave to appeal out of time.
9. In this case, the Applicant has stated that the Judgment in the matter was delivered on 25th November, 2024 by the trial court but despite several follow ups including sending a formal letter dated 11th December, 2024 to request for the said Judgment, the same was not provided until he was served with an undated Warrant of Attachment. The Applicant has confirmed that the law provides for an appeal to be lodged within thirty (30) days of a decision by the trial court but has attributed the failure to file the appeal on time to the delay in obtaining a copy of the Judgment. He has attached the letter dated 11th December, 2024 requesting for a copy of the Judgment which he also confirms was availed in the Case Tracking System (CTS) on 16th December, 2024.
10. On the other hand, the Respondent has objected to the Applicant being granted leave to appeal out of time arguing that the application was filed after inordinate delay given that the Judgment was delivered on 25th November, 2024 and present application filed on 17th January 2025. He also states that the Judgment was posted on the CTS and that the appeal being a challenge on quantum of damages, could have been filed without the typed copy of Judgment and proceedings.



11. On the second issue, the law on stay of execution is enshrined under Order 42 Rule 6 of the [Civil Procedure Rules](#), which provides that:-
[Order 42, rule 6.] Stay in case of appeal.
 - (1) No appeal or second appeal shall operate as a stay of execution or proceedings under a decree or order appealed from except appeal case of in so far as the court appealed from may order but, the court appealed from may for sufficient cause order stay of execution of such decree or order, and whether the application for such stay shall have been granted or refused by the court appealed from, the court to which such appeal is preferred shall be at liberty, on application being made, to consider such application and to make such order thereon as may to it seem just, and any person aggrieved by an order of stay made by the court from whose decision the appeal is preferred may apply to the appellate court to have such order set aside.
12. The purpose of an application for stay of execution pending appeal was explained by the court in the case of [RWW -vs- EKW](#) [2019] eKLR, where the court held:-

“The purpose of an application for stay of execution pending an appeal is to preserve the subject matter in dispute so that the rights of the Appellant who is exercising the undoubted right of appeal are safeguarded and the appeal if successful, is not rendered nugatory. However, in doing so, the court should weigh this right against the success of a litigant who should not be deprived of the fruits of his/her judgment. The court is also called upon to ensure that no party suffers prejudice that cannot be compensated by an award of costs.”
13. From this provision, again the courts have set out the requirements to be satisfied by a party seeking an order for stay of execution as follows:-
 - a. Substantial loss
 - b. Unreasonable delay
 - c. Security for due performance of the appeal
14. In the instant case, it is the Applicant’s case that his appeal raises weighty and arguable issues and he stands to suffer irreparable damage if the orders sought for are not granted. He further states that the Respondent will not suffer any prejudice since the decretal sum can be secured in a manner acceptable to court to which the Respondent has contested arguing that the Applicant has not demonstrated the arguability of his intended appeal and how it will be rendered nugatory. He contends that equity does not aid the indolent.
15. The court having found that a period of two months in filing this application cannot be said to be inordinate delay, it has also considered the other requirement and find that the Applicant has demonstrated that he is likely to suffer substantial loss if the order for stay of execution is not granted and has even gone on to express the willingness to deposit the security to safeguard the Respondent’s rights as a Decree-Holder.
16. In the upshot, this court finds that the Applicant’s application is meritable and I will be in the interest of justice to grant the orders sought. The Notice of Motion application dated be and is hereby allowed in the following terms:-
 - a. The Appellant/applicant to file and serve the Record of Appeal within thirty (30) days from the date of this ruling.



- b. That Leave be and is hereby granted to the Applicant to file an appeal out of time and the draft Memorandum of Appeal annexed herein be deemed as duly filed and served.
- c. That there be stay of execution of the Judgment and decree issued on condition that the Applicant/Appellant deposits the full decretal sum in court as security within thirty (30) days from the date of this ruling.
- d. In default of order (c) above, the application shall automatically stand dismissed and the interim orders issued herein shall lapse without further recourse from court.
- e. Given that the appeal arose from Ruiru Law Court, this file is hereby transferred to Thika High Court for disposition of the appeal.
- f. Mention on 6th October, 2025 before the Deputy Registrar High Court for parties to confirm compliance and take directions on hearing of the appeal.

It is so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT KIAMBU THIS 3RD DAY OF SEPTEMBER, 2025.

D. O. CHEPKWONY

JUDGE

In the presence of:-

M/s Kabuba holding brief for M. Gatundu counsel for Respondent

Court Assistant - Martin

