



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MACHAKOS
MISC .CIVIL APPLICATION NO. E214 OF 2023

**PLATINUM OUTSOURCING & LOGISTICS (E.A) LTD...
APPLICANT**

VERSUS

**WILSON NYANSIMERA.....
.....RESPONDENT**

RULING

1. This ruling pertains to the Applicant's Notice of Motion dated 31st October, 2023. The motion seeks a stay of execution of the decree in Mavoko CMCC No. 127 of 2019 arising from the Judgment delivered on 21st September, 2023, pending hearing and determination of an intended appeal. It also seeks leave to appeal out of time.
2. The application is supported by the affidavit of Rosemary Chemurgor Kosgei sworn on 31st October 2023. The gist of the application, as can be discerned from the grounds on its face thereof and in the affidavit, is that being aggrieved by the judgment of the lower court the Applicant is desirous of bringing an appeal; that the appeal is arguable and has high

chances of success; that the Respondent stands to suffer no prejudice; that on the other hand, the Applicant stands to suffer substantial loss and that the delay in preferring the appeal was due to miscommunication and an omission on the part of the Advocate which should not be visited upon the Applicant.

3. The application was not opposed

Disposition

4. I have carefully considered the application, the grounds on its face, the submission and the law. In regard to the application for leave to appeal out of time, Section 79G of the Civil Procedure Act states 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 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.”

5. This court is guided by the conditions laid by the Supreme Court in the case of **Nicholas Kiptoo Korir Arap Salat vs IEBC and 7 Others Application no 16 of 2023** where it stated-

“The underlying principles a court should consider in exercise of such discretion should include-

Extension of time is not a right of any party. It is an equitable remedy that is only available to a deserving party at the discretion of the court;

A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the court;

Whether the court should exercise the discretion to extend time, is a consideration to be made on a case by case basis;

Whether there is a reasonable reason for the delay.

The delay should be explained to the satisfaction of the court;

Whether there will be any prejudice suffered by the respondent if the extension is granted;

Whether the application has been brought without undue delay.”

6. Applying the above principles to this case, I find that the Applicant who was late in filing the appeal by ten days only, has given a plausible explanation for the delay. I am also satisfied that the Respondent shall not suffer any prejudice

as he shall have an opportunity to defend the appeal, the leave craved is granted provided that the appeal shall be filed within thirty (30) days of today.

7. As for the application for stay of execution the same cannot be allowed as there is yet no appeal.
8. The application therefore succeeds only partially and to the extent only that leave to appeal out of time is granted.
9. The costs of the application shall be borne by the Applicant. and in default the leave granted shall lapse. The application succeeds to that extent only.
10. The Applicant shall bear the costs of this application.

Orders accordingly.

Ruling signed, dated and delivered virtually on this 25th day of September 2025.

E N MAINA

JUDGE

IN PRESENCE OF:

Ms Keter, Advocate for the Applicant.

Geffrey Court Assistant.

ORIGINAL