



REPUBLIC OF KENYA



KENYA LAW
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**Asava v Tanui & another (Miscellaneous Civil Application
E083 of 2025) [2025] KEHC 14446 (KLR) (15 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 14446 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KITALE
MISCELLANEOUS CIVIL APPLICATION E083 OF 2025**

RK LIMO, J

OCTOBER 15, 2025

BETWEEN

LINET LIAVULI ASAVA APPLICANT

AND

VIOLA JEMESUNDE TANUI 1ST RESPONDENT

NCBA BANK PLC 2ND RESPONDENT

RULING

1. The applicant herein vide notice of motion dated 17/9/25 seeks the following prayers namely;
 - i. Spent
 - ii. Stay of execution of decree issued in Kitale CMCC No.208 of 2024 pending the hearing and determination of this application.
 - iii. That there be stay of execution in Kitale CMCC No.208 of 2024 pending determination of intended appeal.
 - iv. That leave be granted to the applicant to appeal out of time.
 - v. Costs.The grounds are;
 - a. That the applicant has obtained a judgment and decree against the respondents.
 - b. That she is aggrieved about the judgment and wishes to lodge an appeal but the period of appeal lapsed.
 - c. That the applicant was unable to appeal on time because she was sick.



- d. That she has an arguable appeal.
 - e. That she is willing to deposit security.
2. She had sworn an affidavit on 17/9/25 in support of the application and has reiterated the above grounds.
3. She has exhibited a letter from County Government of Vihiga dated 8/9/25 showing she has been a patient there since November 2024.
4. She avers that the 1st respondent has commenced execution and may not recover the sum if she succeeds in the intended appeal.
5. She has further exhibited a copy of the decree and a copy of draft memorandum of appeal deponing that the appeal has high chances.
6. The 1st respondent has opposed this appeal vide a replying affidavit sworn on 22/9/25. She avers that the trial court rescinded a contract between her and the applicant and ordered the motor vehicle to revert back to the applicant and 2nd respondent. That the applicant was ordered to refund her Kshs.3,650,000/-.
7. She argues that the applicant cannot continue using the motor vehicle and fail to refund her as ordered by the court adding that the applicant has been in possession of the lorry since 30/4/2024.
8. The 1st respondent objects to the applicant's health condition as a basis for failure to meet her obligations and faults her for acting in bad faith. According to the respondent the applicant wants to benefit from the judgment and only wants to prevent her from enjoying the same fruit of judgment.
9. She further points out that the applicant has not proposed any security for due performance of decree.
10. This court has considered this application and the grounds relied upon. The only reason raised by the applicant in the substantive prayer, which is to appeal out of time, is that owing to ill health she was unable to file her appeal on time. The judgment which is the subject of intended appeal was delivered on 14/5/25. The medical document exhibited is a letter dated 8/9/2025 from Vihiga County Hospital. The document states that the applicant has been an outpatient there since November 2024 and was last there on 5/3/2025. This court finds that there are some unexplained anomalies from medical document exhibited. For one the medical document is from Vihiga County and yet the applicant in her affidavit says she is a resident of Kiminini Trans-Nzoia. She has not stated why she had to move from Kitale County Hospital, pass Kakamega County Hospital and go to Vihiga County for treatment.
11. Secondly and more importantly the document does not state that the applicant either was grounded or needed a bed rest for some time and therefore could not appeal on time.
12. Thirdly the applicant is represented by counsel. She is the one who went to court to get back her lorry and so when the judgment was delivered she must have been advised accordingly. She has not stated that owing to her health condition, she learnt about the judgment when the period to appeal had lapsed.
13. This court finds that the applicant has not shown or demonstrated good faith and sufficient reasons to warrant enlargement of time to enable her appeal. This court's discretion can only be exercised in favour of a party who shows sufficient cause and good faith. The application before me lacks in the 2 aspects.

For that reason this court finds no merit in the application dated 17/9/25 and the same is dismissed in the entirety with costs to the respondents.



DELIVERED, DATED AND SIGNED AT KITALE THIS 15TH, DAY OF OCTOBER, 2025.

HON JUSTICE R.K. LIMO

KITALE HIGH COURT.

Ruling delivered in open court

In the presence of

Bikundo for the applicant

Adua for the 2nd respondent

Duke/Chemosop- court assistants

