

REPUBLIC OF KENYA
IN THE EMPLOYMENT & LABOUR RELATIONS COURT AT
NAIROBI

MISC. APPLICATION NO. E298 OF 2025

MAISHA STEEL (E. A) LIMITED.....
.....APPLICANT

VERSUS

ABDULKARIM MUSSAH
RESPONDENT

RULING

1. Before Court is the Applicant's application dated 19th August, 2025, brought pursuant to Article 159 2(d) of the Constitution of Kenya, 2010, Order 42 Rule 6, Order 50 Rule 6, Order 51 Rule 1 of the Civil Procedure Rules, 2010 and Sections 1A, 1B and 3A. The Applicant seeks Orders THAT: -

- i. Spent
- ii. The Honorable Court be pleased to extend the time for filing an appeal against the decision of the Ruiru Magistrate Court MCELRC No. E 276 of 2024 (Abdulkarim Mussah versus Maisha Steel (E.A) Limited delivered on the 18th July, 2025 by Hon. Noelle Kyanya (D.R).
- iii. Spent
- iv. THAT this Honourable Court be pleased to issue a stay of execution of the whole Judgment delivered on

the 18th day of July, 2025 pending the hearing and determination of the Intended Appeal.

- v. An interim order do issue directing the Applicant to deposit half the decretal sum in a joint interest earning account to be held in the names of the advocates of the Applicant and the Respondent within Forty-Five (45) days of the decision of the court.
 - vi. This Honourable Court do issue any other order that it may deem just and fit to issue.
 - vii. The costs of this application be provided for.
- 2.** The application is premised on the grounds on the face of the Motion and the Supporting affidavit of **W. Kevin Michuki**, Counsel on record for the Applicant.
 - 3.** The crux of the application is the judgment delivered by Honourable Noelle Kyanya delivered on 18th July, 2025 in MCELRC Case No. E 276 of 2024 (ABDULKARIM MUSSAH versus Maisha Steel (E.A) Ltd). The Applicant states that it applied to be supplied with copies of proceedings on the 21st July, 2025 and the same was only supplied on the 12th August, 2025.
 - 4.** The Applicant avers that it was only left with Six (6) days to file it's memorandum of appeal and record of appeal, but that despite the limited time, it has Applicant managed to compile its memorandum of appeal and record of appeal.

5. It states that it is out of time by a mere two (2) days as its 30 days lapsed on 16th August, 2025, and pray that time be extended to allow it pursue the appeal.
6. The Respondent opposed the application vide a replying affidavit sworn on 26th August, 2025 by the Respondent herein. He avers that the instant application was filed on the 19th August 2025, over one (1) month after the delivery of judgment, and that the Applicant has not demonstrated what loss it stands to incur if they pay the decretal amount.
7. The Respondent further states that the Applicant has not demonstrated his penury to the extent that he cannot compensate the Applicant the total decretal sum if the appeal is successful. He avers further that the stay sought would amount to ensuring a barren success to him and renders him unable to reap the fruits of my judgment.
8. Both parties filed submissions in the matter and which have been duly considered.

Determination

9. In the case of ***Margaret Njoki Kamau v Reuben Ndivo Mwangi (2021) eKLR***, the Court had this to say on its power to extend time:
“Order 50 Rule 6 provides that where a specific time is fixed for doing an act or taking any proceedings, the court has powers to enlarge such

time on terms, notwithstanding that the application is brought after the time prescribed has lapsed. The courts power to enlarge time is unfettered. The discretion must however be exercised judiciously and not capriciously.”

- 10.** It has now been settled that what the court considers in exercising such discretionary power, is the length of the delay, the reason (s) for the delay, whether or not the appeal is arguable, the degree of prejudice to the Respondent and whether there is an issue of public interest involved. ***(See Nicholas Kiptoo Arap Korir Salat v. Independent Electoral & Boundaries Commission & 7 Others).***
- 11.** The Applicant told court that he sought to be supplied with typed proceedings on 21st July, 2025 and that the same was only supplied on 12th August, 2025, with just Six (6) days left to file its memorandum and record of appeal, but that despite the limited time, it has managed to compile its memorandum and record of appeal.
- 12.** The Applicant further avers that it was out of time by a mere two (2) days as its 30 days lapsed on 16th August, 2025, and pray that time be extended to allow it pursue the appeal.
- 13.** The party that seeks extension of time to file an appeal, bears the burden of satisfying the court that her

application is worthy of the exercise of this discretionary power.

14. The Applicant's time to file its appeal lapsed on 16th August, 2025 the judgment sought to be appealed against, having been delivered on 17th July, 2025. The instant application was lodged on 19th August, 2025, just two days after the lapse of the said duration.

15. The Applicant attributes the delay to the late supply of typed proceedings and has shown that it promptly filed the instant motion.

16. Section 79G of the Civil Procedure Act, provides as follows on the power of the court to extend time: -

“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.”

17. The Applicant herein has sufficiently explained the reason for the delay in lodging its appeal, and the reason for the delay is in my view justifiable.

18. Further, other than the delay in enjoying the fruits of his judgment, the Respondent has not shown prejudice he will suffer if the application is allowed.

19. I find the prayer for extension of time merited and is allowed.

20. On the prayer for stay of execution, Order 42 Rule 6 (1) and (2) of the Civil Procedure Rules, provides for stay of execution as follows:-

“(1) No appeal or second appeal shall operate as a stay of execution or proceedings under a decree or order appealed from except 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.

(2) No order for stay of execution shall be made under sub-rule (1) unless—

(a) the court is satisfied that substantial loss may result to the applicant unless the order is made and that the application has been made without unreasonable delay; and

(b) such security as the court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the applicant.”

21. The grant of an order of stay is an equitable remedy and which is given at the discretion of the court. The general rule however, is that if there is no overwhelming hindrance, a stay of execution ought to be granted so that an appeal, if successful, may not be rendered nugatory. Cotton L J in ***Wilson v Church (No 2) 12 Ch D (1879) 454*** held: -

“I will state my opinion that when a party is appealing, exercising his undoubted right of appeal, this court ought to see that the appeal, if successful, is not nugatory.”

22. This Court has already allowed the Applicant's prayer for extension of time to file an appeal, and to decline the stay orders will no doubt render the extension of time or the filing of the appeal an academic exercising.

23. In light of the foregoing, I am inclined to allow the Applicant's application, which I hereby do, in the following terms: -

a) That an order be and is hereby issued extending time for filing an appeal against the decision of the Ruiru Magistrate Court MCELRC No. E 276 of 2024 (Abdulkarim Mussah versus Maisha Steel (E.A) Limited delivered on the 18th July, 2025, and such appeal be filed within 14 days of this order.

b) That a stay of execution be and is hereby issued against the whole Judgment delivered on the 18th July, 2025 pending the hearing and determination of the Intended Appeal.

c) An order be and is hereby issued directing the Applicant to deposit the entire decretal sum in a joint interest earning account to be held in the names of the advocates of the Applicant and the Respondent within thirty (30) days of this order.

d) I make no orders on costs.

24. Orders of the Court.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS 16TH DAY OF OCTOBER, 2025.

**C. N. BAARI
JUDGE**

Appearance:

Ms. Muthoni h/b for Mr. Michuki for the Applicant

Mr. Kuyo Present for the Respondent

Ms. Esther S -C/A