



REPUBLIC OF KENYA



**Mwangi v Othuok (Civil Miscellaneous Application E025 of 2025)
[2025] KEHC 14050 (KLR) (9 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 14050 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT SIAYA
CIVIL MISCELLANEOUS APPLICATION E025 OF 2025**

DK KEMEL, J

OCTOBER 9, 2025

BETWEEN

MARGARET NYAMBURA MWANGI APPLICANT

AND

TERRY ADHIAMBO OTHUOK RESPONDENT

RULING

1. The Applicant herein has filed a Notice of Motion dated 23/7/2025 seeking for several reliefs namely:
 - a. Spent.
 - b. Spent.
 - c. That this court be pleased to grant the Applicant leave to appeal out of time in respect to the judgment delivered in Ukwala PMCC E097/2023 (Terry Adhiambo Oothuok Vs. Margaret Nyambura Mwangi) dated 27/5/2025 by Hon Manasses.
 - d. That the Honourable court be pleased to grant an order of stay of execution of the judgment and/or the decree delivered on 27/5/2025 and all consequential orders therefrom pending the hearing and determination of the intended appeal.
 - e. Costs be provided for.
2. The application is supported by the grounds set out thereunder and by the supporting affidavit of Margaret Nyambura Mwangi, the Applicant herein sworn on 23/7/2025. The Applicant's gravamen is inter alia; that the trial court's judgment was delivered on 27/5/2025 in favour of the Respondent which comprised of Liability at 100%, General Damages of Kshs300,000/=, Special Damages of Kshs6,000/= plus costs and interest all ruled against the Applicant; that the Applicant is aggrieved by the said judgment and intends to lodge an appeal as per the draft memorandum of appeal; that there was delay in transmitting instructions on appeal by the Applicant to her advocates as she was then



consulting and deliberating on the next cause of action; that the Applicant stands to suffer substantial loss and damage if she is not allowed to file her appeal and ventilate it; that her appeal is arguable as it raises triable issues; that the application has been made without undue delay; that it is in the interest of justice that an order of stay be granted; that the Respondent will not suffer any prejudice if the orders are granted; that the Applicant is willing to abide by the terms and conditions to be imposed by the court; that it is in the best interest of justice that this application be allowed.

3. The Respondent filed grounds of opposition dated 30/7/2025 which are inter alia; that the application is frivolous, vexatious and an abuse of the court process; that the application does not satisfy the prerequisites for the grant of the orders sought; that the application is misconceived, bereft of merit and actuated by malice.
4. The application was canvassed by way of written submissions. Both parties duly complied.
5. The Applicant's submissions are dated 27/8/2025. It was submitted that there was no inordinate delay in filing the present application since upon the delivery of the judgement on 27/5/2025 the Applicant engaged her Advocate over the possibility of lodging an appeal and thus managed to file the application almost one month after the delivery of the judgement. It was the contention of the Applicant that the period of delay is not inordinate and excusable. Counsel placed reliance in the case of *Mwangi S Kimenyi Vs Attorney General & Another* [2014] eKLR. It was also submitted that the intended appeal is arguable with a high chance of success and that no prejudice will be suffered by the Respondent if the prayers are granted.
6. Learned counsel for the Respondent filed submissions dated 18/9/2025. It was submitted that the Applicant has not rendered a plausible explanation for the delay to lodge the appeal in time. Further, it was submitted that the intended appeal does not raise any triable issues and which appears to suggest that the Applicant's concerns is to do with the quantum of damages and thus the issue of liability is not in dispute. Learned counsel submits that the Respondent stands to suffer great prejudice as she is being denied the fruits of her judgement. It was finally submitted that the Applicant has not fulfilled the conditions imposed by Order 42 Rule 6(2) of the Civil Procedure Rules. It was finally submitted that should the order on stay of execution is granted then the Applicant should pay half the decretal sums to the Respondent while the other half be deposited as security.
7. I have given due consideration to the application and the submissions tendered. It is not in dispute that the Applicant did not lodge her appeal within the stipulated period of thirty days upon the delivery of the judgement sought to be appealed against. It is also not in dispute that section 79G of the [Civil Procedure Act](#) allows a party to lodge an appeal out of time if an applicant demonstrates good and sufficient cause as to why the appeal could not be filed in sufficient and good time. I find the only issue for determination is whether the application has merit.
8. The Applicant has averred that she was dissatisfied by the judgement of the trial court and that she took some time to consult on its ramifications and later decided to appeal against it and that by that time the statutory period of thirty days had elapsed. She has further maintained that she has an appeal which is arguable and raises triable issues and that she should be accorded an opportunity to ventilate it.
9. It is noted that the impugned judgement was delivered on 27/5/2025 and hence the Memorandum of Appeal ought to have been lodged latest the 27/6/2025. The present application and draft memorandum of appeal were filed on 25/7/2025 and thus the period of delay is about 28 days after the statutory period. In my view, the said is not excessive and over the edge. The explanation rendered by the Applicant appears plausible and that the Respondent's discomfiture can easily be taken care of by an award of costs. It is in the interest of justice that each party must be given an opportunity and day in court to ventilate their rival issues in view of the provisions of article 48 of [the constitution](#) that



guarantees a right to access justice. The Supreme Court in the case of Nicholas Kiptoo Arap Salat Vs IEBC & 7 Others [2014] Eklr derived certain underlying principles that a court should consider in the exercise of discretion in regard to extension of time and which are inter alia; extension of time is not a right of a party as 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 to 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 prejudice suffered by the Respondent if the extension is granted; whether the application has been brought without undue delay and whether in certain cases, like election petitions, public interest should be considered for extending time.

10. The Applicant's explanation that she was still consulting on her next course of action whether to satisfy the judgement or appeal against is plausible as she should not be vilified over the same as she needed to make a decision one way or another. Learned counsel for the Respondent has faulted the Applicant for taking too long to make a decision. I am satisfied by the explanation tendered and that the period of 28 after the statutory period of appeal not unreasonable delay. I find the delay is not inordinate and thus the same is excusable.
11. I have perused the draft memorandum of appeal and note that the Applicant has issues with the award of general damages. I find that the same raises triable issues which merit a determination. The Applicant should be allowed to ventilate her appeal.
12. As regards the prayer for stay of execution pending the intended appeal, the provisions of Order 42 Rule 6(2) of the Civil Procedure Rules provides for three conditions to be met by an applicant seeking such a prayer and which are inter alia; that the application must be filed without undue delay; that the Applicant stands to suffer substantial loss if the order is not granted; that the Applicant is ready and willing to offer security for the due performance of the decree which will ultimately be binding upon him/her. Looking at the said conditions and as noted in the foregoing paragraphs, the Applicant has already rendered a plausible explanation for the delay and that the application filed after 28 days after the statutory period of appeal has been found to be not inordinate. The Applicant has also averred that she stands to suffer substantial loss if the order for stay is not granted. The Respondent has claimed that she stands to be prejudiced if the issue of her judgment is interfered with. Indeed, the Respondent has the judgement in her favour and that she is entitled to the fruits of that judgment. If she is going to be denied access, then she requires the Applicant to take care of her concerns. Learned counsel for the Respondent has proposed that since the appeal is on quantum only, then the Applicant should pay half of the decretal sums to the Respondent while the other half is deposited into a joint interest earning account pending determination of the intended appeal. Further, the learned counsel for the Respondent has contended that there is no appeal in existence and thus the prayer for stay of execution should not arise. If such a view is taken by the courts then many litigants will be denied justice as they will not approach the courts for relief once the period for lodging appeals has elapsed. I find that the Applicant ought to be given an opportunity access justice as guaranteed by *the constitution* vide article 48 thereof. It is my view that the Respondent is not likely to come out empty handed after determination of the intended appeal and hence the proposal by the learned counsel for the Respondent that the Applicant should pay half of the decretal sums while the balance is placed in an interest earning account is reasonable. This thus takes care of the issue of security and thus I find that the Applicant has surmounted the hurdles under Order 42 Rule 6(2) of the Civil Procedure Rules and thus entitled to the prayer for stay of execution pending the intended appeal.
13. In view of the foregoing observations, it is my finding that the Applicant's application dated 23/7/2025 has merit. The same is allowed in the following terms:



- a) The Applicant is granted leave to file and serve a Memorandum of Appeal within ten days from the date hereof.
- b) An order of stay of execution of the judgement and decree in Ukwala PMCC No. E096 of 2023 is hereby granted upon the Applicant paying half the decretal sums to the Respondent through her counsel while the balance shall be deposited into a joint interest earning account in the names of both Advocates for the parties within thirty (30) days from the date hereof failing which the stay shall lapse.
- c) The costs of the application shall abide in the appeal.

Orders accordingly.

DATED AND DELIVERED AT SIAYA THIS 9TH DAY OF OCTOBER 2025.

D. KEMEI

JUDGE

In the presence of:

Ochang.....for Appellant/Applicant.

omondi.....or Respondents.

Kimaiyo/Kevin.....Court Assistant.

