



**Singoei & another v Momanyi (Miscellaneous Civil Application  
E011 of 2025) [2025] KEHC 13891 (KLR) (2 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 13891 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
MISCELLANEOUS CIVIL APPLICATION E011 OF 2025**

**E OMINDE, J  
OCTOBER 2, 2025**

**BETWEEN**

**WILSON KIPRUGUT SINGOEI ..... 1<sup>ST</sup> APPLICANT**

**PAUL KIMAIYO ..... 2<sup>ND</sup> APPLICANT**

**AND**

**MERCYLINE KERUBO MOMANYI ..... RESPONDENT**

**RULING**

1. What is pending before this court is the Applicants' Notice of Motion dated 23/01/2025 seeking the following orders;
  1. Spent
  2. Spent
  3. That a temporary stay of execution does issue *ex parte* in the interim and/or further execution against the judgment/decree in Eldoret Small Claim No. E1048 of 2023 and all consequential orders and/or proceedings arising there from pending the hearing and determination of the Appeal.
  4. That this Honorable court be pleased to grant the Applicant/Appellant leave to file a memorandum of Appeal out of the stipulated thirty days after judgment against a Judgment delivered on 25<sup>th</sup> October 2024 by Hon. Rodgers Otieno in Eldoret Small Claim No 1199 of 2023.
  5. That upon grant of prayer 4, the Memorandum of Appeal filed on 17<sup>th</sup> January 2025 be deemed to be properly filed.
  6. That cost of this application be provided for.



2. The Application is expressed to be brought under Order 42 Rule 6 of the [Civil Procedure Rules, 2010](#), Sections 1A, 1B, 3, 3A and 63 of the [Civil Procedure Act](#), and ‘all other enabling provisions of the law’.
3. The Application is premised on the grounds on the face of it and the averments of the 2<sup>nd</sup> Applicant in the supporting affidavit. He deposed that the trial court delivered judgement on 31<sup>st</sup> August 2024 and being dissatisfied with the same he has preferred an Appeal. He annexed and marked as PK 1a) and b) a copy of the judgement and memorandum of appeal. Further, that if the decretal amount is paid to the Respondent, the appeal will be rendered nugatory.
4. He urged that the Respondent has obtained warrants of attachment and attached his motor vehicle registration number KAQ 613T to his detriment. That the said vehicle is his only source of income as he operates it as a public service vehicle and if execution proceeds, he and his family will suffer. He maintained that he has met all the requirements as set under Order 42 Rule 6 of the [Civil Procedure Rules](#).
5. In response to the Application, the Respondent filed a Replying Affidavit dated 17<sup>th</sup> March 2025. He deposed that the Applicants fully participated in the hearing of Eldoret Small Claims Civil Claim No. E 1048 of 2023 and the Applicants were given 30 days stay of execution. Costs of the suit were then taxed and the Applicants’ advocate was notified. She urged that it is clear that the Applicants were aware of the judgment and chose to sit on their rights and ignored to settle or appeal the judgment within the timeframe of stay She stated that the Applicants have not met the threshold for stay of execution orders and prayed the court dismiss the Application with costs to the Respondents.
6. The parties were directed to file submissions but Counsel for the Respondent stated that they would be relying on their Replying Affidavit. The Applicant filed submissions dated 1<sup>st</sup> April 2025 through the firm of Messrs. Martim & Company Advocates.

### **Applicants’ Submissions**

7. Learned counsel for the Applicants stated that the law regards stay of execution pending appeal is guided by Order 42 Rule 6(2) of the [Civil Procedure Rules 2010](#) and cited the case of [Chris Mungan N. Bichase vs Richard Nyasaka Tongi & 2 Others](#) (2018) eKLR; [Halal & Another vs Thourtone Turpin Ltd](#). Further, he submitted that the Applicant must demonstrate that the intended Appeal will rendered ‘nearby’ if stay is not granted as was held in the case of [Hassan Guyo Wakelo vs Straman EA Ltd](#) (2013) eKLR.
8. On substantial loss, counsel referred the court to paragraph 7 of the Respondent’s Replying Affidavit dated 17<sup>th</sup> March, 2025 where she confirms the auctioneer being instructed to attach the Applicant’s property, urging that if the Applicant’s property is auctioned and sold, he stands to lose the attached property through sale by way of an auction. Counsel cited the case of [Kenya Shell Limited vs Kibiru](#) [1986] eKLR and [Silverstein vs Chesoni](#) (2002) eKLR in this regard.
9. On furnishing of security, counsel submitted that the Applicants are ready to provide security as will be ordered by court. On whether the Applicant has an arguable appeal, counsel urged that he has filed an Appeal vide Eldoret Civil Appeal Case No. E010 of 2025 where he has raised 8 grounds of appeal which generally challenge the principles upon which the trial court reached its decision on liability and quantum. He maintained that the grounds of Appeal raise triable issues of both that and law and is arguable with high chances of success.
10. On whether the appeal will be rendered nugatory counsel submitted that the Respondents have commenced execution of the judgment and the Respondents have instructed the Auctioneer to attach the property of the Appellants. That the execution will amount to sale of the Applicants property in



satisfaction of the decretal sum will render the appeal nugatory as it will affect the substratum of the Appeal. He urged the court to allow the application as prayed.

### **Analysis & Determination**

11. Having addressed my mind to the pleadings and the submissions as herein summarized, it is my considered opinion that the issues for determination are;
  1. Whether the orders for stay of execution should issue
  2. Whether the Applicant should be granted leave to file an Appeal out of time
12. The principles guiding the grant of a stay of execution pending Appeal are well settled. These principles are provided for under Order 42 Rule 6(2) of the *Civil Procedure Rules* which provides:

“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.”
13. Of special significance is that Section 34 of the *Small Claims Court* provides for the expeditious disposal of cases filed before these courts. The said provision also provides for the manner in which the court is mandated to handle all case that are filed before it in order that the mandate that is placed upon these courts is realized. The said provision is a mandatory one and it is as hereunder;
  - (1) All proceedings before the Court on any particular day so far as is practicable shall be heard and determined on the same day or on a day to day basis until final determination of the matter which shall be within sixty days from the date of filing the claim.
14. The above being the case, it also follows then that appeals emanating from this court, which should be on points of law only must as well be disposed of expeditiously. The Appellant/Applicant herein seeks for leave to appeal out of time and that in the interim, a stay of execution of the decree of the court does issue for the reasons given.
15. The court herein notes that the judgement the subject matter of the decree sought to be stayed was delivered on 31<sup>st</sup> August 2024. This Application was filed on 23<sup>rd</sup> January 2025 and the orders sought are based inter alia on the grounds that the Respondent has obtained warrants of attachment, proclaimed and attached the Appellant/Applicant’s motor vehicle registration number KAQ 613T Nissan Matatu in execution of the decree and to the detriment of the Applicant for reasons that the same operates as a public service motor vehicle and is his only source of income and if execution is to proceed, he and his family stand to suffer irreparably.
16. Primary to the court determining whether the order of stay and the other subsequent orders herein ought to be granted therefore, the immediate issue that the court should determine is whether the delay by the applicant in moving the court is inordinate.



17. What amounts to inordinate delay was considered in the case of Nairobi HCC No. 32 of 2010, *Utalii Transport Company Limited & 3 Others v NIC Bank Limited & another* [2014] eKLR and the Court in determining what amounted to inordinate delay had this to say;
- “Whereas there is no precise measure of what amounts to inordinate delay. And whereas what amounts to inordinate delay will differ from case to case depending on the circumstances of each case; the subject matter of the case; the nature of the case; the explanation given for the delay; and so on and so forth. Nevertheless, inordinate delay should not be difficult to ascertain once it occurs; the litmus test being that it should be an amount of delay which leads the court to an inescapable conclusion that it is inordinate and therefore, inexcusable”
18. The above said, in considering the mandate of the Small Claims Court is the expeditious disposal of cases and in considering all the procedural safeguards that have been built into the relevant statute to ensure that this mandate is realized at all times in the hearing and determination of cases before these courts in a maximum period of six months, I am of the very well-considered opinion that an application to appeal a decision of this court brought almost five months after a determination has been made amounts to a delay that is in all aspects and respects inordinate.
19. Additionally, the Applicants have not submitted at all on the issue of leave to file the appeal out of time and neither have they made any averments on the same in the affidavit in support of the application. The Applicant has also not given any reasons at all in his application to explain what necessitated the delay in filing the intended appeal.
20. What is obvious from the depositions made by the Applicant is that he only moved the court upon realization of the fact that execution was imminent. For this reason, I find that the Application by the Applicant seeking for stay of execution and the leave to file the Appeal out of time lacks merit. The Application is accordingly dismissed in its entirety with costs to the Respondent and the interim orders herein issued are now hereby vacated.

**READ DATED AND SIGNED AT ITEN ON 2<sup>ND</sup> OCTOBER 2025**

**E. OMINDE**

**JUDGE**

