



REPUBLIC OF KENYA



KENYA LAW
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Rutto & another v SJ (Minor Suing through the Next Friend and Father VH (Miscellaneous Civil Application E081 of 2025) [2025] KEHC 15103 (KLR) (28 October 2025) (Ruling)

Neutral citation: [2025] KEHC 15103 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KITALE
MISCELLANEOUS CIVIL APPLICATION E081 OF 2025**

RK LIMO, J

OCTOBER 28, 2025

BETWEEN

RUTH RUTTO 1ST APPLICANT

GABRIEL LEWIS RUTTO 2ND APPLICANT

AND

SJ (MINOR SUING THROUGH THE NEXT FRIEND AND FATHER

VH RESPONDENT

RULING

1. The applicants herein have through a notice of motion dated 11/9/2025 moved this court for the following orders;
 - i. Spent
 - ii. Spent
 - iii. That leave be granted to the applicants to file an appeal out of time against the judgment of Hon Margaret Nafula Makokha (PM) delivered on 6/8/2025 in Kitale CMCC No.E218 of 2023 between SJ (minor suing through next friend and father VH –vs- Ruth Rutto and Gabriel Lewis Rutto).
 - iv. That upon grant of prayer (3) above there be a stay of execution of the decree issued vide Kitale CMCC No.E218 of 2023 pending the hearing and determination of the intended appeal.
 - v. Costs of this application.
2. The grounds of this application are listed as follows;



- a. That judgment was delivered against the applicants in the cited lower court on 6/8/25 where the respondent was awarded Kshs.900,000/- future medical expenses of Kshs.100,000/- and special damages of Kshs.6690 plus costs and interests.
 - b. That the applicants intend to appeal because they are dissatisfied with the judgment.
 - c. That time within which to file the appeal has lapsed.
 - d. That failure to file the intended appeal was not deliberate but was caused by inadvertent delay in transmission of instructions to appeal from applicants' insurers. That the applicants' insurers were involved in several internal meetings hence the delay.
 - e. That leave to appeal is mandatory.
 - f. That the intended appeal has overwhelming chances of success.
 - g. That it is in the best interest of justice for the applicants to be granted leave to appeal so that they can ventilate their issues.
 - h. That this court is clothed with unfettered jurisdiction to grant the orders sought and no party will be prejudiced.
 - i. That in the unlikely event of any prejudice, costs will adequately compensate him.
 - j. That unless the orders are granted the applicants stand to suffer irreparably.
3. The applicants' counsel submits that the delay occasioned was only 4 days which in her view is not inordinate and that it would be more prejudicial to deny the applicants a chance to appeal.
 4. The respondent is opposed to this application and relies on his replying affidavit sworn on 17/9/25. He avers that the parties in this case entered a consent on Party and Party Costs and Mr Kisaka advocate for the respondent submits that there was a legitimate expectation that the decretal sum would be paid within 30 days after the lapse of stay of execution which was entered by consent.
 5. He further avers that if a consent was entered on 11/8/25, it beats logic that the applicants or their insurer would later become dissatisfied with the judgment and decree.
 6. The respondent faults the applicants for intentional and deliberate delay and has pointed out that no correspondences between the applicants and their counsel have been exhibited to demonstrate when the insurer instructed the applicants' counsel to appeal.
 7. According to the respondent the intended appeal stands no chance and lacks in merit.
 8. The respondent further avers that the applicants waived their right to appeal after the lapse of 30 days.
 9. Mr Kisaka further submits that the respondent is not privy to meetings held by the applicants' insurers.
 10. He submits that extension of time is not a right to a party but an equitable remedy available at the discretion of the court. He relies on the Supreme Court's decision in the case of Nicholas Kiptoo Arap Korir Salat –vs- The Independent Electoral and Boundaries Commission & 7 Others (2014) KESC 12 (KLR).
 11. This court has considered this application and the grounds raised. I have also considered the opposition put forward by the respondent.
 12. The applicant seeks an extension or enlargement of time to file an appeal against a judgment entered against them vide Kitale CMCC No.E218 of 2023. The only reason or explanation given is that



the applicants' insurers were involved in many internal meetings and as such delayed in relaying instructions to the applicants' counsel to file the appeal. The other reason given is that the applicants hold the view that their appeal stands high chances of success because the award made by the lower court was excessively high. Those are the main reasons listed or raised by the applicants in this application.

13. Extension of time as correctly stated by the respondent is a discretionary matter. It is not a right nor is it a matter that is taken for granted. A party invoking the discretionary power of a court must lay sufficient basis. He has the burden to persuade the court that he or she deserves the discretion of the court. In other words an applicant must demonstrate concrete grounds to invoke the discretion of court to extend time and because enlargement of time is an equitable remedy he must also approach the court with clean hands or good faith. This court in that regard is well guided by the cited Supreme Court decision in Nicholas Kiptoo Arap Korir Salat –vs- The Independent Electoral and Boundaries Commission & 7 Others (2014) KESC 12 (KLR) where the court succinctly expressed itself as follows;

“ Extension of time is not a right of a party. It is an equitable remedy that is only available to a deserving party at the discretion of the court. A party who seeks extension of time has the burden of laying a basis to the satisfaction of the court. Whether the court should 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 court, whether there will be prejudice suffered by the respondents if extension is granted, whether the application has been brought without delay.....”

14. Guided by the above principles let me examine the explanations given by the applicants to explain reason for delay. They say that the insurers had internal meetings that is why the delay was occasioned. But they have not given the dates or details of the “many internal meetings” that the applicants' insurers were involved in. The nature or the minutes of the meetings have not been exhibited and neither have the dates and places the meetings were allegedly held been shown as a sign of good faith to demonstrate that owing to the said meetings, a delay in instructing counsel to appeal was occasioned. This is compounded by the fact that the respondent asserts that they entered a consent on Party and Party Costs on 11/8/25 and 30 days stay.
15. The applicants have also not shown correspondences made between them and their insurers again as a sign of good faith that the delay was due to some reasonable inadvertence.
16. This court finds that in the absence of evidence of actual meetings and the dates of the meetings the explanation that there were ‘internal meetings’ falls short. The applicants have failed to lay sufficient basis to invoke the discretion of this court in that regard.
17. Secondly and more importantly, the applicants submit through counsel that they have high chances in the intended appeal but have failed to exhibit the copy of the judgment from the lower court with a view to poking holes where they consider gives them high chances in the intended appeal.
18. In the absence of a copy of the judgment this court is unable to determine whether the intended appeal stands high chances. This application in that regard again falls short.

In the premises this court finds no merit in the application dated 11/9/25 and the same is dismissed with costs.

DELIVERED, DATED AND SIGNED AT KITALE THIS 28TH DAY OF OCTOBER, 2025.

HON JUSTICE R.K. LIMO



KITALE HIGH COURT

Ruling delivered in open court

In the presence of

Chepkinyeng for Applicants appearing virtually

Kisaka for Respondent appearing physically

Duke/Chemosop – Court assistants

