



**Warui t/a Wanken Distributors & another v Board of Management
Aberdare Teachers Training College (Civil Miscellaneous
E034 of 2024) [2025] KEHC 15475 (KLR) (28 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 15475 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYAHURURU
CIVIL MISCELLANEOUS E034 OF 2024
LN MUTENDE, J
OCTOBER 28, 2025**

BETWEEN

MARGARET WARUI T/A WANKEN DISTRIBUTORS 1ST APPLICANT

PAUL K OLE ILALE T/A NASIKOI AUCTIONEERS 2ND APPLICANT

AND

**BOARD OF MANAGEMENT ABERDARE TEACHERS TRAINING
COLLEGE RESPONDENT**

RULING

1. The Appellants approached this court through a Notice of Motion dated 23rd September, 2024 seeking orders thus;
 1. Spent.
 2. Spent.
 3. Spent.
 4. That pending the hearing and determination of the intended appeal there be a stay of execution of the judgment delivered on 9th February, 2023 in Nyahururu HCCA E004 of 2021 and all the consequential orders issued pursuant thereto.
 5. That pending the hearing and determination of the intended appeal there be a stay of proceedings in Nyahururu CMCC No. 254 of 2019.
 6. That the honourable court be pleased to grant leave and/or extend/enlarge the time within which and/or to enable the Applicant herein to lodge and file a Notice of Appeal,



Memorandum of Appeal and a Record of Appeal against the judgment delivered on 9th February, 2023 in Nyahururu HCCA E004 of 2021.

7. That pursuant to prayer 4 above being granted, the annexed Notice of Appeal and Draft Memorandum of Appeal filed herewith be deemed as properly and duly filed and subsequently served upon the Respondent herein and/or their advocates on record upon payment of the requisite court fees.
 8. That pursuant to prayer 5 being granted, the honourable court be pleased to grant leave and/or extend/enlarge the time within which the Applicant herein to serve the Notice of Appeal upon the Respondent.
 9. That the costs of this application be provided for.
2. The application is premised on grounds that the Applicants are dissatisfied with the judgment entered against them delivered on 09/02/2023. That the Applicants/Intended Appellants had not given their advocates on record proper instructions and the 1st Applicant has been sickly and still is.
 3. That the delay in filing an appeal was neither intentional, deliberate nor inordinate but as a result of factors beyond the Applicants' control and that the Respondent shall not be prejudiced.
 4. The application is opposed by the Respondent through a replying affidavit deposited by its secretary. It is averred that two (2) years have lapsed since the appeal was dismissed therefore the delay in filing the application is inordinate.
 5. Further, that the instant application is a delaying tactic as the Respondent is in the process of executing the ruling delivered on 22nd February, 2021 in Nyahururu CMCC No. 254 of 2019, where it was in the process of extracting an order of Notice to Show Cause against the Applicant herein.
 6. I have considered the application, affidavit in support and annexures thereto; and, also the rival arguments.
 7. Principles that persuade the court in determining whether or not to grant stay of execution are provided for in Order 42 Rule 6 (2) of the Civil Procedure Rules, 2010, as follows;

No order for stay of execution shall be made under subrule (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.
 8. Applicants seeking stay of execution must demonstrate that failure to grant the order would result in substantial loss that cannot be repaired and especially so, not be compensated with damages. As correctly argued by the Applicants, the issue of loss that is substantial has been determined by case law.
 9. In *Kenya Shell Limited v Kibiru & Another* [1986] KLR 410 the court rendered itself as follows regarding the principle of substantial loss;

“ 1.



2. In considering an application for stay, the court doing so must address its collective mind to the question of whether to refuse it would render the appeal nugatory.
 3. In applications for stay, the court should balance two parallel propositions, first that a litigant, if successful should not be deprived of the fruits of a judgment in his favour without just cause and secondly that execution would render the proposed appeal nugatory.
 4. In this case, the refusal of a stay of execution would not render the appeal nugatory, as the case involved a money decree capable of being repaid.”
10. The question was also considered in *James Wangalwa & Another v Agnes Naliaka Cheseto* [2012] eKLR where the court stated as follows;

“No doubt, in law, the fact that the process of execution has been put in motion, or is likely to be put in motion, by itself, does not amount to substantial loss. Even when execution has been levied and completed, that is to say, the attached properties have been sold, as is the case here, does not in itself amount to substantial loss under Order 42 Rule 6 of the CPR. This is so because execution is a lawful process.

The applicant must establish other factors which show that the execution will create a state of affairs that will irreparably affect or negate the very essential core of the Applicant as the successful party in the appeal. This is what substantial loss would entail, a question that was aptly discussed in the case of *Silverstein N. Chesoni* [2002] 1KLR 867, and also in the case of *Mukuma V Abuoga* quoted above. The last case, referring to the exercise of discretion by the High Court and the Court of Appeal in the granting stay of execution, under Order 42 of the CPR and Rule 5(2) (b) of the Court of Appeal Rules, respectively, emphasized the centrality of substantial loss thus:

“...the issue of substantial loss is the cornerstone of both jurisdictions. Substantial loss is what has to be prevented by preserving the status quo because such loss would render the appeal nugatory.”

11. What is insinuated is that the kind of loss should not be dismissed as merely nominal, it should not be something trivial that arises due to speculation. The Applicant advances the argument that the irreparable loss to be suffered is that the Respondent will proceed and execute the judgment. That the 1st Applicant who had given instructions to the 2nd Applicant is currently bedridden due to health issues.
12. Indeed, it is averred that the Respondent is in the process of executing the ruling delivered on 22/02/2021 in *Nyahururu CMCC No. 254 of 2019* where it was in the process of extracting an order of Notice to Show Cause against the Applicant herein which is a legal process that has been undertaken by the Decree Holder.
13. In the impugned ruling the trial court granted the Applicants herein the opportunity to purge contempt. The terms of the purge of the contempt were restricted to how they would compensate the Respondent for the unlawful sale of a motor vehicle and each one of them was to deposit Kshs.100,000/- as security within 14 days and also pay costs. The order is dated 22nd February, 2021. Four (4) years later the Applicant seeks stay of proceedings in the matter namely *Nyahururu CMCC No. 254 of 2019*.



14. To grant stay of proceedings depends on discretion of court and circumstances prevailing. To emphasize the importance of this relief the Applicants relied on the case of Kenya Wildlife Services v James Mutembei [2019] eKLR where it was held that;

“stay of proceedings should not be confused with stay of execution pending appeal. That stay of proceedings is a grave judicial action which seriously interferes with the right of a litigant to conduct his litigation. That the test for stay of proceedings is higher and stringent.”

15. Where the court is invited to grant stay of proceedings it would have to consider the interest of justice including what the outcome of the matter is likely to be. The question would be whether the continuation of the proceedings will affect the matter and hence amount to an abuse of the process. It has not been stated what became of the matter and why the Applicants waited for 4 years to seek stay of proceedings in CMCC 254 of 2019.

16. On the question of extension of time to file the appeal, this court has jurisdiction to extend time to file an appeal out of time, discretion that is exercised upon satisfaction of existence of valid reasons and where justice so demands.

17. In Henry Mukora Mwangi v Charles Gichina Mwangi Civil Application No. Nairobi 26 of 2004 the court held that;

“It is now well settled that the decision whether or not to extend the time for appealing is essentially discretionary. It is also well settled that in general the matters which this court takes into account in deciding whether to grant an extension of time are: first, the length of the delay; secondly, the reason for the delay; thirdly (possibly), the chances of the appeal succeeding if the application is granted; and, fourthly, the degree of prejudice to the respondent if the application is granted.”

18. In cited case of Beth Mugure Gathungu v James Muchiri Gathinyo & Others CMC 237 of 2014 the court held that;

“It is upon the applicant to place sufficient material before the court which would explain why there was delay in filing the Memorandum and Record of Appeal. The court has to balance the competing interests of the applicant with those of the respondent. This was well stated in the case Ms. Portreitz Maternity versus James Karanga kavia, Civil Appeal No 63 of 1997 where the court stated

“That right of appeal must be balanced against an equal weighty right that of the plaintiff to enjoy the fruits of the judgment delivered in his favour. There must be a just cause for depriving the plaintiff of that right.”

A plausible and satisfactory explanation for delay is the key that unlocks the Court’s flow of discretionary favor. There has to be value and clear reasons, upon which discretion can be favourably exercised. There have been numerous judicial pronouncements on this precise point.”

19. In the instant matter, the cause of delay as explained by the Applicants is that the 1st Applicant has been sickly. Other than the allegation, there is absolutely nothing to prove such an allegation. A person who is sick would ordinarily have hospital records of treatment details to prove the sickness; documentation of prescribed medication or any other formal documentation issued by a medical doctor stating the



person's health condition that would have deterred her from giving proper instructions as stated. In the result the cause of delay is not satisfactorily explained.

20. On the issue of delay, the judgment was delivered on 09/02/2023 and the instant application is dated 23rd September, 2024 but filed on 04/10/2024. This is a period of one year, seven months. Without satisfactory reasons having been given, inordinate delay would call upon this court considering the facts and context of the case.
21. The intended appeal is against the judgment of the court arising from the ruling of the Chief's Magistrate court case delivered on the 22nd February, 2021 where the court affirmed the decision which is self-explanatory/and well-reasoned. It is surprising that a person who was granted the opportunity to purge a contempt would take that long without acting. For that reason, the delay in issue took longer than reasonable time. The inordinate delay that I view negatively does not warrant the Applicants being granted the opportunity to have the orders sought.
22. In the premises, the application fails and is disallowed with costs to the Respondent.
23. It is so ordered.

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

.....

L.N. MUTENDE

JUDGE

