



**West Kenya Sugar Company v Wanyonyi (Suing for and on behalf of  
the Estate of the Late John Mboya Amolo) (Civil Appeal E155 of 2025)  
[2025] KEHC 15558 (KLR) (30 October 2025) (Judgment)**

Neutral citation: [2025] KEHC 15558 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAKURU  
CIVIL APPEAL E155 OF 2025  
HI ONG'UDI, J  
OCTOBER 30, 2025**

**BETWEEN**

**WEST KENYA SUGAR COMPANYYA ..... APPELLANT**

**AND**

**WINNIE AYUMA WANYONYI (SUING FOR AND ON BEHALF OF THE  
ESTATE OF THE LATE JOHN MBOYA AMOLO) ..... RESPONDENT**

**JUDGMENT**

1. This is the notice of motion dated 20<sup>th</sup> August, 2025 where the applicant is seeking the following orders:
  - 1 & 2 Spent
  3. That the honourable court be pleased to stay execution of the judgment delivered on 19<sup>th</sup> June, 2024 in Nakuru Civil Suit No. 1258 of 2017 – Winnie Ayuma Wanyonyi Vs West Kenya Sugar Company Limited and Anne W. Kabiru pending the hearing and determination of the instant Appeal.
  4. That costs of this application be abide the outcome of this instant Appeal.
2. The application is premised on the grounds on its face plus the supporting affidavit of Eunice A. Owuor the manager, legal and insurance services of the appellant/applicant. She averred that the applicant has filed the present appeal but the stay of execution orders issued in Nakuru Misc No. E078 of 2025 lapsed on 16<sup>th</sup> July, 2025 and there was fear of execution.
3. She states that the appeal has high chances of success and the applicant wished to be heard on the same before any execution is carried out.



4. The respondent filed a replying affidavit sworn on 27<sup>th</sup> August, 2025, in which she has averred that the application is mischievous, ill advised, done in bad faith and should be dismissed with costs. That in Nakuru High Court Misc. Application No. E078 of 2025 the court gave a conditional leave to appeal against the decision of the subordinate court. Further that the condition was filing of the Memorandum of appeal and a record of appeal within 30 days from the date of the ruling.
5. She states that the applicant only filed the memorandum of appeal on the last day i.e 16<sup>th</sup> July, 2025 while no record has been filed. To her, the appeal is non-existent, and the applicant has failed to explain its failure to comply with the conditions. She thus urged the court to disallow the application.
6. The applicant filed a supplementary affidavit explaining the failure to file the record of appeal being the unavailability of typed proceedings. The deponent confirmed depositing shs 100,000/= as directed by the court on 22<sup>nd</sup> August, 2025 (EO – 2).
7. The application was disposed of by written submissions.

### **The applicant's submissions**

8. These were filed by O & M Law LLP and are dated 8<sup>th</sup> August, 2025. On whether the applicant has met the threshold for stay of execution pending the determination of the intended appeal counsel referred to Order 42 Rule 6(2) of the Civil Procedure Rules, 2010. He further cited the case of Jeff Hamilton (K) Ltd V Bamburi Cement Limited [2024] KEHC 953 (KLR) where the court stated as follows on a condition of stay:

In Vishram Ravji Halai vs. Thornton & Turpin Civil Application No. Nai. 15 of 1990 0990] KLR365, the Court of Appeal held that whereas the Court of Appeal's power to grant a stay pending appeal is unfettered, the High Court's jurisdiction to do so under Order 42 rule 6 of the Civil Procedure Rules is fettered by three conditions namely, establishment that the application has been made without unreasonable delay satisfaction of substantial loss and the furnishing of security.

7. The Court, in exercising its discretion, should-also further opt for the lower rather than the higher risk of injustice and finally the court will also consider the overriding objective as stipulated in sections IA and 1B of the *Civil Procedure Act*, which the courts are now enjoined to give effect [Emphasis ours]
9. Counsel further submitted that there had been threats of execution by the respondent following the issuance of the decree in the lower court case. There is also fear that in the event of a successful appeal the respondent who is a widow and who could be a woman of straw may not be able to pay the amounts paid. He explained the applicant's willingness to abide by any conditions for stay of execution to be issued by this court.
10. On the issue of costs and while relying on section 27(1) of the *Civil Procedure Act* the case of *Vickins V Okeya & another* [2023] KEHC 18835 KLR counsel urged the court to allow the costs of the application to abide the outcome of the appeal.

### **The respondent's submissions**

11. The same were filed by Korir, Barasa & Company Advocates and are dated 8<sup>th</sup> October, 2025. Counsel opposed the application saying that even if the applicant had deposited the Ksh 100,000/= as directed by the court, that did not validate the otherwise incompetent appeal.



12. On whether there existed a competent appeal on which to anchor the present application, counsel answered in the negative. He made reference to the conditions issued in Nakuru High Court Misc. Application No. E078 of 2025 on 16<sup>th</sup> June, 2025 which were not complied with. It is his submission that failure to comply rendered the conditional leave spent and ineffectual and consequently there is no valid appeal before this court. On this issue counsel referred to the cases of:
- i. Equity Bank Ltd V West Link Mbo Limited [2013] eKLR and
  - ii. Nicholas Kiptoo Arap Korir Salat V IEBC & 7 others [2014] eKLR where the Supreme Court held:  
  
“a party who flouts procedural rules cannot invoke the court’s discretion to seek equitable relief. Rules of procedure are not technicalities; they are integral to the fair administration of justice”.
13. On whether the applicant has offered sufficient cause for the delay he answered in the negative. He argued that the delay herein is both unexplained and inordinate as it went beyond the 30 days prescribed by the court’s order. Reliance was placed on the cases of:
- i. Leo Sila Mutiso V Rose Hellen Wangari Mwangi [1999] 2EA 231
  - ii. Bi – Mach Engineers Ltd V James Kahoro Mwangi [2011] eKLR where the court held:  
  
“a litigant has a duty to diligently pursue his case. Indolence and inaction cannot be rewarded”.
14. Thirdly on whether the applicant is entitled to orders of stay of execution he referred to order 42 Rule 6(2) of the Civil Procedure Rules. Counsel submitted that the applicant had failed to show any substantial loss that it would suffer if stay is not granted. Secondly that the delay in filing the present application was inordinate. He urged the court to allow the respondent to enjoy the fruits of the Judgment. He finally contended that there was no competent appeal before this court.
15. On who should bear the costs of the application counsel submitted that the respondent should be awarded costs of the application in view of the issues argued above in her favour.

### **Analysis and determination**

16. Upon due consideration of the notice of motion, affidavits, submissions by both parties, cited cases and the law I find the main issue to be whether the application is merited.
17. From the material before this court there is no dispute that the applicant sought leave to file appeal out of time vide Nakuru High Court Civil Misc. Application No. E078 of 2025. The said leave was granted by Gichohi J on 16<sup>th</sup> June, 2025 on condition that the Memorandum of Appeal and the Record of Appeal are filed and served within 30 days from the date of the Ruling. The last date for filing of the said documents was 16<sup>th</sup> July, 2025. Was this complied with?
18. The applicant filed the Memorandum of Appeal on 16<sup>th</sup> July, 2025. However, no record of appeal has been filed to date. The respondent has submitted that failure to file the record of appeal as directed makes the memo of appeal a nullity. On the other hand, the applicant argues that it did what it could to have the proceedings in the lower court case Nakuru MCCC No. 1258 of 2017 Winnie Ayuma Wanyonyi (suing for and on behalf of the estate of John Mboya Amolo) V West Kenya Sugar Company



- Ltd supplied. Annexed is a copy of the letter dated 25<sup>th</sup> June, 2025 (EO – 1) to court asking for the proceedings.
19. Is there any other way the applicant would have prepared the record of appeal without the proceedings from the lower court? The answer is in the negative. There is clear evidence that a request for certified proceedings was made long before the 16<sup>th</sup> July, 2025 but the same is yet to be acted upon by the court administration. This court is well aware of the challenges faced by the Judiciary in the typing of court proceedings in the preparation of appeals especially those emanating from decisions in the lower courts.
  20. In as much as the filing of the record of appeal within 30 days was one of the conditions given in Nakuru High Court Civil Misc. Application No. E078 of 2025 I find that the applicant's inability to comply with it was not deliberate as it has no control over the typing of proceedings. I however advise counsel for the applicant to do a follow up on the issue through this court's deputy registrar in order to have the proceedings in issue typed on priority basis. I will therefore not strike out the Memorandum of Appeal as that would amount to denying the applicant its rights to hearing for no mistake it has committed.
  21. The next issue s on the issue of stay of execution. Order 42 Rule 6(2) of the Civil Procedure Rules provides as follows:
    - (2) 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 court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the applicant.
  22. The subject of the appeal herein is the Ruling by Hon. Menya delivered on 24<sup>th</sup> January, 2025 in which the court declined to set aside its Judgment against the applicant. As at the point of issuance of directions on 22/08/2025 as is the case now the Judgment and decree of the lower court were not in the court file for this court to know the decretal amount. A perusal of annexure E01 shows that the decretal sum as at 24<sup>th</sup> January, 2025 was Ksh 3,044,466/= and that is what is to be taken into account when addressing the issue of stay of execution.
  23. There is no dispute that the respondent has a Judgment against the appellant/applicant which Judgement has not been set aside. The respondent is therefore entitled to the enjoyment of the fruits of the Judgment. See RWW V EKW [2019] KEHC 6523 KLR.
  24. On the other hand, the appellant who is dissatisfied with the Judgment has a right to challenge it in a superior court which it has done. It too has rights which must be protected. I have perused the Memorandum of Appeal and the orders sought. The main suit arose from a fatal accident and that's why the respondent is suing on behalf of the estate of John Mboya Amolo. The Judgment entered was a default Judgment as the appellant/ applicant did not file a defence.
  25. Bearing all these facts in mind I find that the court has the duty to balance all these interests raised by both parties. In its affidavit the appellant/applicant has averred that its not sure whether the respondent would be in a position to refund the money if paid. The respondent did not specifically respond to this. This is an important issue for consideration. See the cases of:
    - i. G. N. Muena p/a (516) Mt View Maternity and Nursing Home Vs Miriam Maalim Bishar & another (2010) eKLR
    - ii. National Industirual Credit Bank Ltd V Aquinas Francis Wasike & another (2006) eKLR



26. In a case such as what is before this court the issue of security is key. This was explained in the case of *Nduhiu Gitahi V Warugongo* (1988) KLR 621; I KAR 100; (1988-92) 2 KAR 100 where the Court of Appeal expressed itself as follows:

The process of giving security is one which arises constantly so long as the opposite party can be adequately protected. It is right and proper that security should be given in a way which is least disadvantageous to the party giving the security. It may take many forms. Bank guarantees and payment into court are but two of them. So long as it is adequate, then the form of it is a matter which is immaterial. In an application for stay pending appeal, the court is faced with a situation where judgment has been given. It is subject to appeal. It is not the function of the court to disadvantage the defendant while giving no legitimate advantage to the plaintiffs. It is the duty of the court to hold the ring even handedly without prejudicing the issues pending in the appeal. For that purpose, it matters not whether the plaintiff (sic) are secured in one way rather than the other, it would be easier for the defendants or if for any reasons they would prefer to provide security by a bank guarantee rather than cash. There is absolutely no principle why they should not do so... The aim of the court in this case was to make sure, in an even handed manner, that there (sic) would not be prejudiced and that the decretal sum would be available if required. The Respondent is not entitled, for instance, to make life difficult for the Applicant so as to tempt him into settling the appeal nor will any party lose if the sum is actually paid with interest at court rates. Indeed, in this case there is less need to protect the defendant because nearly half the sum will have been paid and the balance was at one stage open to negotiation to reduce it.'

27. In view of all the above I find merit in the notice of motion dated 20<sup>th</sup> August, 2025 which I hereby allow. There shall be stay of execution of the Judgment and decree in Nakuru CMCC No. 1258 of 2017 – *Winnie Ayuma Wanyonyi V West Kenya Sugar Co. Ltd and Anne W. Kabiru* on the following conditions in the interest of both parties

- i. The record of appeal to be filed by 21<sup>st</sup> November, 2025. The DR must ensure this is done.
- ii. Ksh 2,000,000/= to be deposited in a joint interest earning account held at a reputable bank in the joint names of counsel for the Appellant and Respondent herein:
- iii. Condition (ii) should be complied with by 29<sup>th</sup> November, 2025. Non-compliance will result in automatic waiver of the stay of execution.
- iv. Mention on 2<sup>nd</sup> December, 2025 for further directions.
- v. Costs of the application shall be in cause.

28. Orders accordingly

**DELIVERED, VIRTUALLY, DATED AND SIGNED THIS 30<sup>TH</sup> DAY OF OCTOBER, 2025 IN OPEN COURT AT NAKURU.**

**H. I. ONG'UDI**

**JUDGE**

