



**Azaral Logistics Limited v John (Civil Appeal E108 of 2025)
[2025] KEHC 16353 (KLR) (Civ) (12 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 16353 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CIVIL
CIVIL APPEAL E108 OF 2025**

**AC MRIMA, J
NOVEMBER 12, 2025**

BETWEEN

AZARAL LOGISTICS LIMITED APPELLANT

AND

LUCY MUMBUA JOHN RESPONDENT

RULING

1. Through the Notice of Motion dated 3rd February 2025, the Applicant sought the following orders: -
 1. Spent
 2. Spent
 3. That this Honourable Court be pleased to grant leave to the Appellant/Applicant to file an appeal out of time from the judgement and decree of Milimani SCCCOMM E5183/2024; Lucy Mumbua John Vs Azaral Logistics Limited.
 4. That the Honourable Court be pleased to grant a stay of execution of the decree in Milimani SCCCOMM E5183/2024; Lucy Mumbua John Vs Azaral Logistics Limited pending the lodgement, hearing and determination of the appeal to be filed in the High Court of Kenya at Milimani Law Courts, Nairobi.
 5. Spent
 6. That costs of this application be in the cause.
2. In the supporting affidavit sworn on 3rd February 2025 together with the grounds on the face of the application, the Applicant through its Counsel Mr. Arnold Oriwa, averred that the Applicant was never served with a notice of entry of judgment and was informed after the stay order which had been



granted had lapsed. Secondly, it averred that the instructions to appeal were issued after expiry of the period for filing the appeal. Additionally, it averred that the delay in presenting the application is not inordinate and further that the appeal has a high chance of success. It was, however, apprehensive that should execution issue and the appeal succeed, it would suffer irrecoverable loss as it would be impossible to retrieve the decretal amount from the decree holder who has not revealed her financial status. The Applicant further filed a Further Affidavit in support of the application where it averred that it had a strained relationship with the previous Law Firm that was in conduct of the matter and as such, only became aware of the judgment upon service of a proclamation notice by the Respondent. It emphasized that the delay is excusable and it would be in the interest of justice for the orders sought to be granted.

3. The Respondent was vehemently opposed to the application. She filed a Replying Affidavit sworn by herself on 26th March 2025. The Respondent faulted the Applicant for being indolent and failing to lodge the appeal within time. She averred that Applicant's Counsel previously in conduct of the matter was present throughout the proceedings at the trial Court including when judgment in the matter was entered. She was apprehensive that the instant application is an effort by the Applicant to deny her lawful execution and frustrate her legitimate claim. She contended that the Applicant has not demonstrated any prima facie arguable grounds to warrant the intervention of this Court. As such, she prayed for this Court to dismiss the application with costs for lack of merit and an abuse of the Court process.
4. Pursuant to the directions of this Court, the application was canvassed by way of written submissions. The Applicant's submissions were dated 5th June 2025 while the Respondent's written submissions were dated 30th May, 2025. The gist of these submissions has been carefully considered and shall be ingrained in the latter part of this decision.
5. From the above rendition, two main issues arise for determination. They are whether the application meets the threshold for enlargement of time and if so, whether the quest for stay of execution is merited.
6. I will begin with the first issue. The power of the High Court to inter alia extend time for a party to lodge an appeal to the Court from a subordinate Court is donated by Sections 65, 79G and 95 of the [Civil Procedure Act](#). Courts have also over time developed legal principles guiding the issue of extension of time. The Court of Appeal in *Thuita Mwangi vs. Kenya Airways* [2003] eKLR stated as follows in respect to the matter: -

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 generally the matters which this court takes into account in deciding whether to grant an extension of time are; first, the length of delay; secondly, the reason for the delay; thirdly (possibly) the chances of appeal succeeding if the application is granted; and fourthly, the degree of prejudice to the Respondent of the application is granted.”

7. And, in *Velji Shahmad vs. Shamji Bros. and Popatlal Karman & Co.* [1957] EA 438, the High Court expressed itself as follows: -

In the interests of the public the court ought to take care that appeals are brought before it in proper time and before the proper court or registry and when a judgement has been pronounced and the time for appeal has elapsed without an appeal the successful party has a vested right to the judgement which ought, except under very special circumstances, to be made effectual. And the Legislature intended that appeals from judgements should be



brought within the prescribed time and no extension of time should be granted except under very special circumstances.

8. The guiding law on extension of time was finally settled by the Supreme Court of Kenya in *Nicholas Kiptoo Arap Korir Salat vs. Independent Electoral and Boundaries Commission & 7 others* [2014] eKLR. The Apex Court derived the following underlying principles which a Court should consider: -
 - i. 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;
 - ii. A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the court;
 - iii. Whether the court should exercise the discretion to extend time, is a consideration to be made on a case to case basis;
 - iv. Whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the Court;
 - v. Whether there will be any prejudice suffered by the respondents if the extension is granted;
 - vi. Whether the application has been brought without undue delay; and
 - vii. Whether in certain cases, like election petitions, public interest should be a consideration for extending time.
9. Having restated the law, this Court will now apply it to the circumstances of this case. Apart from the challenges on whether the judgment ought to eventually be set aside or not, [which issue may be dealt with in the main appeal if leave is granted], at hand is the quest to lodge an appeal out of time. As guided, since the order sought is discretionary, the Applicant must account for the delay in issue.
10. The impugned judgment was rendered on 30th September 2024. Therefore, the Applicant had 30 days within which to lodge the appeal. That was up to 30th October 2024. However, the instant application was filed sometimes on 3rd February 2025. Given that time stops running from 21st December to 13th January as per Section 10 of the *High Court (Organization and Administration) Act*, then the period of delay in this case is around 71 days.
11. The Applicants' main reason as to why it did not file the appeal in time was twofold. One, that there was a strained relationship with its previous Counsel and was not updated of the status of case until when its goods were proclaimed in execution. Two, that it was desirous of pursuing an appeal which it described as having high chances of success.
12. This Court has perused the Further Affidavit which narrated the relationship between the Applicant and its then Counsel. Since the disposition is not controverted, this Court finds it plausible and holds that denying the Applicant an opportunity to lodge an appeal, in such circumstances, will be tantamount to stifling the Applicant's access to justice. In other words, the Applicant's quest to lodge an appeal out of time is merited.
13. Turning to the issue of stay of execution, the applicable principles are well settled. Order 42, Rule 6 of the Civil Procedure Rules provides that an Applicant must satisfy the following conjunctive requirements for the grant of stay of execution pending appeal; that is to say: -
 - i. The application has been made without unreasonable delay;
 - ii. Substantial loss may result to the Applicant unless the order is made; and



- iii. That the Applicant is willing to furnish such security as the court order for the due performance of such decree.
14. It is not lost that the purpose of stay pending appeal as held in the case of RWW vs. EKW [2019] eKLR, is as follows: -
- ... The purpose of an application for stay of execution pending an appeal is to preserve the subject matter in dispute so that the rights of the appellant who is exercising the undoubted right of appeal are safeguarded and the appeal if successful, is not rendered nugatory. However, in doing so, the court should weigh this right against the success of a litigant who should not be deprived of the fruits of his/her judgment. The court is also called upon to ensure that no party suffers prejudice that cannot be compensated by an award of costs... Indeed, to grant or refuse an application for stay of execution pending appeal is discretionary. The Court when granting the stay however, must balance the interests of the Appellant with those of the Respondent.
15. On a careful consideration of the application against the foregoing, and in view of the fact that the Applicant has already been accorded an opportunity to lodge an appeal against the judgment, coupled with the fact that the decree in issue is a monetary one and the Applicant is desirous of complying with the order made on 6th February 2025 calling for the deposit of the sum of Kshs. 200,000/= in Court, but for the relationship with its then Advocates, a stay of execution ought to issue in the unique circumstances of this matter.
16. Deriving from the foregoing discussion, the application is merited and the following final orders do hereby issue: -
- (a) Leave is hereby granted to the Applicant to appeal out of time. The Memorandum of Appeal dated 4th February 2025 is hereby deemed to be properly on record.
- (b) Pending the determination of the appeal, there be a stay of execution of the decree in Nairobi [Milimani] SCCCOMM/E5183/2024 on condition that the Appellant shall deposit the sum of Kshs. 200,000/= [Read: Kenya Shillings Two Hundred Thousand Only] in Court within 14 days of this order and in default execution shall issue.
- (c) The Respondent is hereby awarded the costs of the application assessed at Kshs. 20,000/= [Read: Kenya Shillings Twenty Thousand Only] payable within 14 days of this order and in default execution to issue.
- (d) The Trial Court file be availed for further directions on the appeal.

Orders accordingly.

DELIVERED, DATED AND SIGNED AT NAIROBI THIS 12TH DAY OF NOVEMBER, 2025.

A. C. MRIMA

JUDGE

Ruling virtually delivered in the presence of:

No appearance for the Appellant/ Applicant.

No appearance for the Respondent.

Michael/Amina – Court Assistants.

