



**Kilemi v Gichovi (Civil Miscellaneous Application E029 of 2025)
[2025] KEHC 16053 (KLR) (5 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 16053 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT EMBU
CIVIL MISCELLANEOUS APPLICATION E029 OF 2025
RM MWONGO, J
NOVEMBER 5, 2025**

BETWEEN

ADAMS MWITI KILEMI APPLICANT

AND

FLORENCE MURUGI GICHOVI RESPONDENT

RULING

The Application

1. The applicant filed a notice of motion dated 10th April 2025, which is supported by the grounds set out on its face and the facts deposed in the supporting affidavit thereof. The orders sought are as follows:
 1. Spent;
 2. Pending the hearing and determination of this Application, the Honourable Court be pleased to grant an Interim Order of Stay of Execution of the Judgement and Decree rendered on the 25th February, 2025 vide Embu Small Claims Court SCCC NO. E007of 2024;
 3. Pending the hearing and determination of this Application, the Honourable Court be pleased to grant an Interim Order of Stay of proceedings in Embu CMCC No. E030 of 2025 Florence Murugi Gichovi vs Directline Assurance Company Limited;
 4. The Honourable Court be pleased to extend time and/or grant leave and/or permission to the Applicants to lodge an Appeal out of time against the Judgment and Decree rendered on the 25th February, 2025 vide Embu Small Claims Court SCCC No. E007 OF 2024, between Florence Murugi Gichovi v Adams Mwit Kilem;
 5. Consequent to prayer (3) above being granted, the Applicants be at liberty to file the Memorandum of Appeal within 14 days and/or such shorter period as the Honourable Court may deem fit and/or expedient;



6. The Honourable Court be pleased to grant an Order of Stay of Execution of the Judgment and Decree rendered on the 25th February, 2025 vide Embu Small Claims Court SCCC No. E007 of 2024, between Florence Murugi Gichovi v Adams Mwiti Kilem, together with all consequential orders arising there from and/or attendant thereto, pending the hearing and determination of the Intended Appeal;
 7. As a condition for stay of execution pending the hearing and determination of this Appeal, the Honourable Court be pleased to Order and/or direct the Applicants to deposit half the Decretal sum in a joint interest account; and
 8. Costs of the Application do abide the intended Appeal.
2. The respondent sued the applicant in the Small Claims Court for damages arising from negligence that led to a road traffic accident. The matter was heard and determined in favour of the respondent who was awarded Kshs.650,000/= as general damages for pain and suffering and Kshs.5,990/= as special damages.
 3. The applicant herein stated that he intended to appeal against the Adjudicator's decision but the time for appealing lapsed while he was in the process of changing advocates. He argued that his appeal raises valid points of law and it has high chances of success and urged the court to extend time for appealing. He also urged the court to stay execution of the decree because if such order is not granted, substantial loss would result since the respondent has already set execution in motion.

Replying Affidavit

4. The respondent filed a replying affidavit stating that she notified that applicant of the decree of the court one day after the judgment was delivered but he did not respond. She stated that the prayer for stay of execution is unmerited since execution is a lawful process and it does not amount to substantial loss. That, in any event, she is a person of means and would be able to return the money paid to her if the appeal succeeds. That the delay in lodging an appeal was not satisfactorily explained and that Section 79G of the *Civil Procedure Act* cannot be applied in his case. She argued that there is no appeal on record and so time for appealing cannot be extended. It was her case that the application is meant to deny her enjoyment of the fruits of her judgment and it ought to be dismissed.

Parties' Submissions

5. The application was canvassed by way of written submissions.
6. The applicant submitted that the delay in filing the appeal has been sufficiently explained and it occurred in the process of him changing his advocates. The respondent has also sued the applicant's insurer who is apprehensive that the respondent will levy execution for the decretal amount. He relied on Order 51 Rule 6 of the Civil Procedure Rules and section 59 of the *Interpretation and General Provisions Act* on the power of the court to enlarge time. He also relied on the cases of Omar Shurie v Marian Rashe Yafar [2020] KECA 492 (KLR) and Leo Sila Mutiso v Hellen Wangari Mwangi [1999] 2 EA 231 and argued that in the context of small claims, the 15-day delay was not inordinate.
7. On the issue of stay of execution, he relied on the cases of Esther Wamaitha Njihia & 2 others v Safaricom Limited [2014] KEHC 6699 (KLR) and Stanley Kangethe Kinyanjui V Tony Ketter & 5 others [2013] KECA 378 (KLR) and submitted that he is ready to provide half of the decretal amount as security paid into a joint interest earning account. He submitted that it was necessary that the proceedings in Embu CMCC No. E030 of 2025 be stayed pending appeal as it is a declaratory suit which will be affected by the outcome of the appeal.



8. The respondent relied on *Dolphin Coaches Ltd v Benson Kamau Migwi & another* [2008] KEHC 2150 (KLR) and *Seyani Brothers & Co (K) Limited v Albanus Mwangi Muia* [2021] KEELRC 52 (KLR) and argued that without stay of execution orders in place, it is pointless to extend time for appeal. She relied on Order 42 Rule 6 of the Civil Procedure Rules and stated that stay of execution orders cannot be given as of right. That there is no basis for granting the same. She argued that if the court should grant stay of execution, it should be on condition that the decretal amount be deposited in court.

Issue for determination

9. The issue for determination is whether the application has merit.

Analysis and determination

10. The applicant is seeking stay of execution of the decree in Embu Small Claims Court SCCC NO. E007 of 2024, leave to appeal out of time against the decision of the Adjudicator in Embu Small Claims Court SCCC NO. E007 of 2024 and stay of proceedings in Embu CMCC No. E030 of 2025.

11. Stay of execution is provided for under Order 42 Rule 6(2) of the Civil Procedure Rules 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 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.”

12. The grounds for extension of time of appeal are set out in section 79G of the *Civil Procedure Act* as follows:

“Every appeal from a subordinate court to the High Court shall be filed within a period of thirty days from the date of the decree or order appealed against, excluding from such period any time which the lower court may certify as having been requisite for the preparation and delivery to the appellant of a copy of the decree or order:

Provided that an appeal may be admitted out of time if the appellant satisfies the court that he had good and sufficient cause for not filing the appeal in time.”

13. The application herein was filed 45 days after the impugned decision was rendered by the Small Claims Court. Given the strict timelines in the *Small Claims Court Act*, 2 months is a long time to wait before lodging an application for stay of execution or even for extension of time to appeal. The applicant explained that the delay occurred whilst he was in the process of changing advocates. The applicant’s reason for seeking stay of execution is that substantial loss may result if the order is denied because the respondent has already begun execution.

14. Whilst Small Claims are statutorily adjudicated within 60 days from commencement to determination, it appears to me that to file an application for stay and to appeal out of time within 45 days as was the case here, is rather extravagant. Thus, if stay were granted very strict conditions would have to apply to retain the expedition purposed in Small Claims Court matters.



15. The applicant offered half of the decretal amount as security and that the same should be held in a joint interest earning account. It is settled that execution is a lawful process and it does not amount to substantial loss in an argument for stay of execution (see the case of James Wangalwa & Another v Agnes Naliaka Cheseto [2012] KEHC 1094 (KLR)).
16. Stay of execution and leave to appeal out of time are discretionary reliefs. In the present circumstances, they may be granted on conditions. On the issue of stay of proceedings, from a perusal of the pleadings in Embu CMCC No. E030 of 2025, it is a declaratory suit by the respondent against the applicant's insurer for the decretal sum of Kshs.84,383/= which was awarded following the judgment of the High Court in Embu HCCA No. E020 of 2024. The applicant, in his statement of defense, denied knowledge of Embu CMCC No. E006 of 2024 and the orders made therein.
17. In the declaratory suit Embu CMCC No. E030 of 2025, the respondent has named Embu CMCC No. E007 of 2024 erroneously as Embu CMCC No. E006 of 2024 which does not concern the parties herein. It is still ongoing and it seeks a declaration against the applicant's insurer. The plaint, as filed in Embu CMCC No. E030 of 2025 does not concern the case between the parties herein hence it is neither possible nor appropriate to interfere therewith by issuing a stay of proceedings through the application herein.

Disposition

18. In light of the foregoing, the application partially succeeds.
19. An order for stay of execution pending appeal is hereby granted on condition that the full decretal sum is deposited in court within 14 days of this ruling, failing which the order will be vacated automatically.
20. The time for filing the appeal is hereby extended subject to 19 above, on condition that the memorandum of appeal is filed within 7 days of this ruling, failing which the appeal shall stand dismissed.
21. Costs of the application may be in the cause.
22. Orders accordingly.

DELIVERED, DATED AND SIGNED AT EMBU HIGH COURT THIS 5TH DAY OF NOVEMBER, 2025.

R. MWONGO

JUDGE

Delivered in the presence of:

Ms. Yegon for Applicant

Mugane for Respondent

Francis Munyao - Court Assistant

