



REPUBLIC OF KENYA



KENYA LAW
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**Ochieng & another v Gachanja (Civil Appeal 758 of 2019)
[2025] KEHC 14905 (KLR) (Civ) (14 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 14905 (KLR)

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

CIVIL

CIVIL APPEAL 758 OF 2019

JN MULWA, J

NOVEMBER 14, 2025

BETWEEN

IBRAHIM OTIENO OCHIENG 1ST APPELLANT

GALAXY PHARMACEUTICALS LIMITED 2ND APPELLANT

AND

PHILIP CHEGE GACHANJA RESPONDENT

RULING

1. The ruling is in respect of the application dated 30/07/2024 brought by the Appellants under provisions of Order 40 Rule 2, Order 50 Rule 6 and 51 Rule 1 of the Civil Procedure Rules (CPR) and Articles 50(1) and 159(1) & 2 of *the Constitution*.
2. The Applicants who are the Appellants herein seek orders of stay of execution of the trial courts judgment delivered in Milimani CMCC No. 8092 of 2018 on 29/11/2019 against the Appellants, the Defendants in the sum of Kshs. 180,110 plus costs assessed at Kshs. 73,365/- and interest at court rates
3. As at the date of the application, the decretal sum had increased to Kshs. 405,560 as noted in the Notice to Show Cause why execution should not issue against the Judgment Debtors/Applicants
4. On the 3/08/2024, upon an application by the Appellants dated 30/07/2024, the court granted temporary stay of execution orders upon conditions that the appellants deposit in court Kshs. 250,000/= as security pending interparte hearing of the application and the appeal.
5. The Appellants/Applicants case as seen in the supporting affidavit sworn on 30/07/2024 and annexures thereto is that parties had agreed to a lull in execution of the decree pending hearing and determination of the appeal; that at some point on 20/06/2024, the court a (Meoli J) dismissed the appeal from which the execution proceedings arose.



6. It is their further case that thereafter, upon application the appeal was reinstated for hearing on merit, hence the motion before the court dated 30/07/2024 for stay of execution pending hearing and determination of the appeal.
7. The respondent filed a replying affidavit sworn on 16/08/2024 by its Advocate P. Wambugu Kariuki in opposition; citing laches by the Applicants since the judgment was rendered by the trial court.
8. Further the Respondent posits that there are no good reasons or at all for the court to allow the prayers sought as by so doing this court would be sitting on appeal on orders of its sister courts (Meoli J and Chepkwony J) which courts are of parallel jurisdiction and allow it to file the appeal by extending period to file the Record of Appeal.
9. Both parties have filed their respective submissions, which the court has duly considered.

Issues for determination

- a. Whether the court ought to set aside orders of the court dated 20/06/2024 (Chepkwony J.) enlarging period to file Record of Appeal by further 45 days.
- b. Whether an order of stay of execution ought to be granted to the Applicants pending hearing and determination of the appeal.
- c. Who bears costs of the application.

Analysis and Determination

10. This appeal was dismissed by this court for want of prosecution and upon application by the Appellants, it was reinstated for hearing by a court order dated 20/06/2024. The court justice Chepkwony while setting aside the dismissal order of the appeal granted the Appellants 45 days to file the Record of Appeal failing which the appeal would stand dismissed.
11. The Appellants did not comply with the said conditions as no record was filed. They went to sleep and only awoke when execution proceedings were served upon them, specifically a Notice to show cause served upon the 2nd appellant, why he should not be committed to civil jail for failure to pay a sum of Kshs. 405,560/- as shown on the notice to show cause.
12. This prompted the appellants to run to court by the instant motion dated 30/07/2024 subject of this ruling.

At the exparte stage on 3/08/2024, the court allowed temporary stay orders upon a deposit of security of Kshs. 250,000/= pending hearing and determination of the application interpartes. The deposit was duly made.
13. I have carefully considered the applicants grounds and or failure to comply with timelines stated in the court orders of 20/06/2024. They state that they were not aware of the orders granting them the extension of 45 days upto when the court Meoli J, brought them to their advocates attention, at which point the 45 days extension had expired for reasons that the orders were delivered in their absence, thus approached this court for the orders sought.
14. Whereas this court is of parallel jurisdiction with the sister judges, Meoli and Chepkwony J's if good and plausible reasons are placed before the court, an order to set aside the previous orders would be appropriate and by so doing, this court would not be sitting on appeal of its court orders as submitted by the respondent, as the appeal is yet to be reinstated for hearing.



15. I have perused the ruling (wrongly cited as judgment) dated 11/07/2023 the court Chepkwony J. granted the following orders to the applicants:-
- a. That they were granted last opportunity to prosecute the appeal,
 - b. Orders dismissing the appeal were set aside
 - c. The record of appeal to be filed and the appeal to be listed down for hearing within 45 days from the date of the ruling (on or before 28/08/2023).
 - d. the matter to be mentioned before Deputy Registrar of the Division to confirm compliance and for taking directions on 2/10/2023
 - e. failure to comply with the directions the appeal shall stand dismissed.
 - f. Costs to await outcome of the appeal.
16. Whereas the applicants advocate says they were not aware of the ruling upto 7/03/2024- a period of over one year when a Notice to show cause was issued dated 7/03/2024 to the 2nd appellant, the court takes judicial notice that the ruling/judgment was uploaded in the CTS where the parties, including the public could access it.
17. I agree with the respondent that this was but a continuation of their laxity to follow up the matter in court. They cannot blame the court fully for their laxity for a period of one year, which has not been satisfactorily explained to this court.
18. I have also considered the long journey of the case from the time judgment was delivered in the trial court on 29/11/2019. The applicants cannot claim to have had no knowledge that they had not applied for or obtained stay of execution orders that ordinarily follow upon delivery of judgment.
19. On whether the applicants prayers to set aside the orders of 20/06/2024 (dismissal of the appeal for failure to file the Record of Appeal within 45 days), and allow further 45 days to file the same, upon perusal of the reasons advanced in support vis-à-vis the Respondents objections, it has come out clearly that the applicants have no grounds at all for their failure to comply with court orders.
20. Litigation must come to an end. An appeal filed in 2019 is still not determined; no record of appeal has been filed. The applicants have not even obtained stay of execution orders of the trial court judgment. What comes out clearly is that the applicants are guilty of laches or they are not interested in the prosecution of the appeal.
21. In the case of Ephraim Kanuthu Mwangi V. Muthirithia Farmers Co. Ltd & 2 Others Civil Appeal the court in very similar circumstances rendered that:-
- “...the applicants counsel or indeed the applicant himself checked or inquired of the progress of the proceedings by a reminder, letters or by a visit to the registry. The applicant instead went into deep sleep slumber and as a result, there is a long period of unexplained delay... it cannot by any stretch of imagination be said the delay is not inordinate...”
22. The above resonates well with the instant matter before the court. The court takes note that the appeal had been dismissed for want of prosecution. The court graciously set aside the dismissal orders on 20/06/2024, and allowed the appellant to file the Record of Appeal and have it prosecuted within a specific time. The applicants failed to do so.



In similar circumstances, the court in *Madison Insurance Col Ltd v. Juma Katana Mwamba* [2021] eKLR found no merit in the appellants application for extension of time and dismissed the application.

23. For the foregoing, and being guided by the provisions of Article 159(2) of *the Constitution* that justice delayed is justice denied and being aware that justice ought to be administered to all parties fairly, I find no satisfactory explanation by the applicants to persuade me to exercise my discretion to grant the prayers sought.
24. Further as an equitable relief sought by the appellants it is trite that equity aids the vigilant and not to the indolent; that delay defeats equity, but lack of good faith and reasonable diligence demonstrated by the applicants and or their advocates, nothing can be done as to do so would defeat the purpose and objective of Section 1A, 1B and 3A being facilitation of the just expeditious, proportionate and affordable resolution of civil disputes governed by the act.
25. Section 3A grants the court inherent power to make such orders as may be necessary for the ends of justice or to prevent abuse of the court process. Consequently, the

- a. **Interim orders of stay of execution granted to the appellants on 3/08/2024 are hereby vacated**
- b. **The sum of Kshs. 250,000/= deposited in court by the Applicants shall be released to the Respondent through its advocates on record P. Wambugu Kariuki & Associates Advocates**
- c. **The applicants shall pay the balance of the decretal sum, to be ascertained by the Deputy Registrar upon application.**
- d. **Costs of the application to be borne by the applicants.**

Orders accordingly.

Delivered, Dated and Signed in Nairobi this 14th Day of day of November 2025.

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JANET MULWA.

JUDGE

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