



**Igutura v Kamwara & another (Miscellaneous Civil Application  
E080 of 2025) [2025] KEHC 17708 (KLR) (26 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 17708 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT EMBU  
MISCELLANEOUS CIVIL APPLICATION E080 OF 2025  
RM MWONGO, J  
NOVEMBER 26, 2025**

**BETWEEN**

**JOYADAMS MUNENE IGUTURA ..... APPLICANT**

**AND**

**SAMWEL NJERU KAMWARA ..... 1<sup>ST</sup> RESPONDENT**

**KHUSHI MOTORS LIMITED ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

**The Application**

1. The applicant filed a notice of motion dated 19<sup>th</sup> August 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. Spent;
  3. The Honourable Court be pleased to extend time and/or grant leave and/or permission to the Applicant to lodge an Appeal out of time against the Judgment and Decree rendered on the 15<sup>th</sup> April, 2025 vide Embu CMCC No. E101 of 2023, Between Samwel Njeru Kamwara - Vs- Joyadams Munene Igutura And Another;
  4. 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;



5. 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. E167 OF 2025 Samuel Njeru Kamwara vs Directline Assurance Company Limited;
  6. The Honourable Court be pleased to grant an Order of Stay of Execution of the Judgment and Decree rendered on the 15<sup>th</sup> April, 2025 vide EMBU CMCC NO. E101 OF 2023, between Samwel Njeru Kamwara -Vs- Joyadams Munene Igutura And Another together with all consequential orders arising there from and/or attendant thereto, pending the hearing and determination of the Intended Appeal;
  7. The firm of Kairu & McCourt Company Advocates be granted leave to come on record for the Applicant herein in this matter.
  8. Spent; and
  9. Costs of the Application do abide the intended Appeal.
2. The applicant explained that in the trial court, judgment was entered against the applicant for general damages of Kshs.400,000/= and special damages of Kshs.12,350/=. The applicant was also held 100% liable for the accident. It is her case that there was a delay in obtaining a certified copy of the judgment of the trial court yet she had intended to appeal on time. That a further delay occurred in the course of changing advocates.
  3. These are her reasons for failing to appeal on time and so she prays for extension of time to file her appeal which she asserts has high chances of success. She also seeks stay of execution orders because, following the trial court's judgment, the respondents have moved to execute for the decretal amount and she fears that she will suffer substantial loss. The respondents filed a declaratory suit namely Embu MCCC E167 of 2025 seeking compensation through the applicant's insurer. It is the applicant's prayer that the proceedings in the declaratory suit be stayed.

### **Replying Affidavit**

4. The 1<sup>st</sup> respondent filed a replying affidavit opposing the application. He stated that there are no sensible grounds to grant the orders prayed. That the applicant has not demonstrated that the respondents are in the process of executing for the decretal amount. That there is no proof that the applicant applied for a copy of the judgment and it delayed. That once the trial court's judgment was delivered, it was immediately uploaded on the CTS and became a public record. He also stated that the applicant bore the responsibility to keep abreast with her advocates on record and ensure that her instructions were carried out.
5. Further, it is asserted that the applicant does not have locus standi to seek stay of proceedings in Embu MCCC E167 of 2025 because she is not a party therein. It is urged that the alleged intended appeal does not have any chances of success hence there is no need to extend time for its filing.

### **Parties' Submissions on the application**

6. The application was canvassed by way of written submissions.
7. The applicant submitted that the delay in filing the appeal has been sufficiently explained and it occurred in the process of her changing her advocates. The respondent has also sued the applicant's insurer who is apprehensive that the respondent will levy execution for the decretal amount. She 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. She 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.

8. On the issue of stay of execution, she relied on Order 42 Rule 6 of the Civil Procedure Rules and 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). She submitted that she has already paid into court the decretal amount as security for performance. She submitted that it was necessary that the proceedings in Embu CMCC No. E167 of 2025 be stayed pending appeal as it is a declaratory suit which will be affected by the outcome of the appeal.
9. On his part, the 1<sup>st</sup> respondent relied on the cases of Nicholas Kiptoo Arap Korir Salat v Independent Electoral and Boundaries Commission & 7 others [2014] KECA 782 (KLR) and Mombasa County Government v Kenya Ferry Services & 2 others [2019] KESC 50 (KLR) He argued that the court should not extend the time to file the appeal because there is no good reason why there was a filing delay in the first place. He emphasised that the applicant was not a party to the declaratory suit, hence she has no basis for praying for stay of those proceedings.
10. He also relied on the case of James Wangalwa & Another v Agnes Naliaka Cheseto [2012] KEHC 1094 (KLR) and argued that execution is a lawful process which the respondents are entitled to and it does not amount to proof of substantial loss of the part of the applicant. That in any event, the applicant has not proved that execution has been commenced. On this, he relied on the case of Fazal v Lias [2024] KEHC 8175 (KLR) and submitted that the prerequisites for granting stay of execution have not been met.

#### **Issue for determination**

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

#### **Analysis and Determination**

12. The applicant is seeking stay of execution of the decree in EMBU CMCC NO. E101 of 2023, leave to appeal out of time and stay of proceedings in Embu CMCC No. E167 of 2025, a declaratory suit.
13. 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.” [Emphasis added]
14. 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.” [Emphasis added]

15. The impugned judgment was delivered on 15<sup>th</sup> April 2025. The application herein was filed on 20<sup>th</sup> August 2025, about 4 months after the impugned decision was rendered. The applicant stated that the delay occurred because she could not access the judgment of the trial court on time, and that she was also in the process of changing advocates. The delay of 4 months cannot be said to be wholly unreasonable.
16. Moreover, when the application was filed, the court certified the matter as urgent and granted stay on condition that the applicant deposits the decretal amount in court within 14 days. The applicant complied with this order, deposited the full decretal amount and the court acknowledged that the deposit amounted to timeous compliance. The stay order was to last until determination of this application through this ruling.
17. Therefore, on the issue of stay, the conditions set under Order 42 Rule 6 of the Civil Procedure Code have been met and security for performance has been provided.
18. On the issue extension of time to appeal, the applicant has not demonstrated efforts to obtain the judgment of the trial court. She merely stated that she could not access it in time and that during that time, she was changing advocates. I think that is not a unreasonable explanation given that any change of advocates disorients an applicant and can result in inadvertent but consequent delay. Since the stay has already been granted under Order 42 Rule 6 of the Civil Procedure Code, it is my view, in the circumstances, that the court may exercise its discretion to extend time to appeal under Section 79G of the Civil Procedure Rules.
19. With respect to the prayer for stay of proceedings in the suit in Embu CMCC No. E167 of 2025, it is trite that such an order should not be granted carelessly as its effects will always be far reaching. The respondents sued the applicant’s insurer in Embu CMCC No. E167 of 2025, which is asserted to be a declaratory suit. According to the court’s record, the suit has been concluded and was scheduled for judgment on 05<sup>th</sup> November 2025. A decision may have already been rendered, but even if not, there is no basis to arrest judgment. There is no basis in my view for granting the order for stay of execution as the matter has been overtaken by events in that suit where the applicant is not a party.

### **Disposition**

20. In the result, the application herein partially succeeds and I order as follows:
21. An order for stay of execution pending appeal is hereby granted pending determination of the intended appeal.
22. An order hereby issues extending the time for appeal on condition that the applicant shall file the memorandum of appeal within 10 (ten) days of this ruling, failing which the appeal shall stand dismissed.
23. Costs of the application are in the cause.
24. Orders accordingly.

**DELIVERED, DATED AND SIGNED AT EMBU HIGH COURT THIS 26<sup>TH</sup> DAY OF NOVEMBER, 2025.**

**R. MWONGO**



## **JUDGE**

Delivered in the presence of:

Ms. Yegon for Applicant

Kalamu Ndolo Appearing for the Respondent

Francis Munyao - Court Assistant

