

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KAPENGURIA.
CIVIL APPEAL NO. E004 OF 2025

SIMON MBUBUA1ST APPELLANT
WILLIAM THUNGU MBUGUA 2ND
APPELLANT
ELDORET EXPRESS 3RD APPELLANT

- V E R S U S -

IMMACULATE A. ESEMEK alias
EMMACULATE A. ESEMEKE
RESPONDENT

R U L I N G

Before me is the application dated 5/11/2025, in which the Appellants/ Applicants seek the following orders;

- 1. That leave be granted to KRK Advocates LLP leave to come on record for applicants;**
- 2. Spent;**
- 3. That this court be pleased to grant an extension on the initial timeline to the applicant to make a deposit of Kshs.306,950/= as a condition for stay;**
- 4. That the costs to abide the outcome of the appeal.**

The application is premised on the grounds found in the body of the application and the Affidavit of the 1st Applicant, Simon Mbugua. It was deponed that on 30/7/2025, this court delivered a Ruling in which the applicants were required to make a deposit of Kshs.306,950/= as a condition for Stay pending appeal; that due to the strict timelines and red tape between the applicants and their Counsel, they were unable to comply with the court's order; that they seek the indulgence of the court to finalise the deposit; that their Insurer, Directline Assurance Company Limited was undergoing internal strife at Management level which prompted intervention by the Insurance Regulatory Authority hence inability to make payments by the company; that the issues were in the public domain and that by a Ruling in Nairobi Commercial Tax Division HCC E328/2024, direction was given on the smooth running of the company; that because of these issues, with the Insurers challenges and the fact that many claims had matured, they were unable to make the deposit. They now seek thirty (30) days in which to make the deposit; that the failure to comply with the court's order was beyond their control; that they are keen on making the deposit and proceed to prosecute the

appeal; that the application is made without unreasonable delay and in the interest of equity and justice the court should grant the order sought.

The application was opposed by the affidavit of the Respondent, Immaculate Esemek dated 10/11/2025 in which she deponed that when the applicant failed to comply with the court's order of 30/7/2025, execution was levied and motor vehicle registration KCV 115X was attached and is pending sale; that the application has been overtaken by events; that the court gave the order of stay over four (4) months ago and no effort was made to make the deposit; that the delay in making this application is inordinate; that order are not made in vain; that the issues between the applicant and his Insurer should not affect the compliance with the court order and that the applicant is not in a position to discuss issues pertaining to the Directline Insurance Company as they are not even party to these proceedings.

I have considered the application and both affidavits filed by the parties herein. On 30/7/2025, this court directed that the applicant deposits the full decretal sum in a joint interest earning account of both Counsel of the applicant and

Respondent in a reputable financial Institution within fourteen (14) days of that

date. It is clear from the application that, it was not done. It has taken the applicant a full three (3) months to bring this application. The court had allowed only 14 days for making the deposit of the decretal sum. There has been inordinate delay to bringing this application three (3) months later and has not been satisfactorily explained.

The Respondent deponed that execution has already taken place by way of attachment of a vehicle. That fact has not been denied. In my view the application is overtaken by events. From the annexure (IEI), The attachment was done way back on 1/10/2025.

Extension of time is an exercise of discretion of the court. For the court to grant such prayer, it must be established that the application is made without inordinate delay and that the Respondent will not suffer any prejudice. In the instant case, the applicants have not demonstrated that they are deserving of the order sought. The application is hereby dismissed with the applicant's bearing the costs.

**Dated, signed and delivered in Kapenguria on 4th day of
December, 2025.**

HON. R. WENDOH - JUDGE.

Ruling read in open court in the presence of : -

Appellant/ Applicant- Mr Amihanda

Respondent- Ms. Were holding brief for r. Mwinamo

Juma/Hellen-Court Assistants