

REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
CIVIL APPEAL NO. E062 OF 2025

NAOMI MUTHONI MWAI1ST
APPLICANT/APPELLANT

ELIJAH MWAI WANJOGU 2ND
APPLICANT/APPELLANT

BETH NJERI MWAI3RD
APPLICANT/APPELLANT

VERSUS

MARY WANJIRU MAINA
.....RESPONDE
NT

RULING

1. This is a ruling over a Notice of Motion seeking a stay of execution and leave to file an appeal out of time. The judgment was delivered on 31.7.2025. It was stated that the ruling was not uploaded immediately after ruling. The applicant appointed a new advocate who rushed to file this application. The application was filed after 60 days of delivery, therefore 30 days after lapse of time. I have perused the judgment and note that it was uploaded on 1.08.2025, a day after delivery. The explanation of late uploading is thus otiose.

2. I have, however, noted that the delay is not inordinate. This is the first and last appeal. The issues raised are not idle. The first one is when interest is to be applied to a debt. The second one concerns the binding nature of a document not executed by a party. In the circumstances, the court finds that the appeal is capable of success. The delay is not inordinate, noting that the applicants had to find a new advocate. However, I abhor the fact that they filed an appeal first before seeking an extension. Nevertheless, the court is enjoined not to have regard to procedural technicalities.
3. As a prisoner and a client of the Respondent. He appears to have defended the applicant who unfortunately is serving time at the Nyeri Maximum Security Prison. While the applicant was serving time, the respondent sought to enforce his fees of Ksh 60,000/= through a suit in the lower court.
4. I have perused the application and noted that the delay in filing an appeal is not deliberate. It is excusable. Leave shall therefore be granted for the applicant to file appeal out of time. The same shall be filed within 21 days.
5. The next issue is whether to issue stay of execution. The applicants have shown that they have an appeal which has chances of success. Order 42 rule 6 (1) and (2) requires as follows:
 - (1) No appeal or second appeal shall operate as a stay of execution or proceedings under a

decree or order appealed from except in so far as the court appealed from may order but, the court appealed from may for sufficient cause order stay of execution of such decree or order, and whether the application for such stay shall have been granted or refused by the court appealed from, the court to which such appeal is preferred shall be at liberty, on application being made, to consider such application and to make such order thereon as may to it seem just, and any person aggrieved by an order of stay made by the court from whose decision the appeal is preferred may apply to the appellate court to have such order set aside.

(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.

6. The amount in dispute is 370,000/=. I cannot from the pleadings discern its origin. The traceable amount is Ksh 150,000/=. There is thus stay granted pending appeal on condition that a sum of Ksh. 150,000/= is deposited in court within 45 days.

7. Costs will be in the intended appeal.

Determination

8. I therefore make the following orders: -

- a) Leave shall therefore be granted for the applicant to file an appeal out of time from the judgment and decree in Nyeri SCCC Comm. No. E164 of 2024. The intended appeal shall be filed within 21 days.
- b) There be stay of execution of the judgment and decree in Nyeri SCCC Comm. No. E164 of 2024 pending the intended appeal.
- c) The appellants to deposit a sum of Ksh. 150,000/= in court within 45 days.
- d) Costs do abide the intended appeal.

DELIVERED, DATED and SIGNED at **NYERI** on this **15th** day of **December, 2025**. Ruling delivered through Microsoft Teams Online Platform.

KIZITO MAGARE

JUDGE

In the presence of: -

Kanyoko for the Applicants/Appellants

Mrs. Machira for the Respondent

Court Assistant - Michael