



Demand & another v Unesco Paper Products Limited (Miscellaneous Civil Application E226 of 2025) [2025] KEHC 18713 (KLR) (Civ) (18 December 2025) (Ruling)

Neutral citation: [2025] KEHC 18713 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CIVIL
MISCELLANEOUS CIVIL APPLICATION E226 OF 2025**

LP KASSAN, J

DECEMBER 18, 2025

BETWEEN

**PRINT ON DEMAND 1ST APPLICANT
NOOR MAHMUD 2ND APPLICANT**

AND

UNESCO PAPER PRODUCTS LIMITED RESPONDENT

RULING

Introduction

1. Before this Court is a Notice of Motion dated 28.02.2025 brought by the Applicants under the provisions of Order 10, 42 Rule 6 (1) and rule 11 of the Civil Procedure Rules and Sections 3A, 79G, and 95 of the *Civil Procedure Act*. The Applicants seek, inter alia, orders for stay of the warrants of arrest issued on 25.02.2025, setting aside of the notice to show cause dated 03.10.2024 and leave to file and serve an appeal out of time be enlarged.
2. The grounds for the application stem primarily from the claim that the applicants were condemned unheard in the lower court proceedings, culminating in the imminent threat to the liberty of the 2nd Applicant (Noor Mahmud) due to a warrant of arrest issued on 25.02.2025, committing him to civil jail without affording him a proper opportunity to be heard. Specifically, the application appeals the lower court’s ruling and decree that upheld an interlocutory judgment entered on 14.12.2022, which the court declined to set aside, reasoning that the Applicants were properly served with pleadings when evidence suggested otherwise; the applicants contend that they were only served with the summons to enter appearance, preventing them from filing a proper defence, and they were unaware of the proceedings until faced with an imminent arrest. Furthermore, the application argues that the lower court erred by failing to recognize a triable issue, the existence of a prior payment agreement between



the parties, and by disregarding the fundamental rights of the Applicants to a fair hearing, thus justifying the need for the High Court to intervene and allow the appeal out of time due to the excusable delay caused by the mistakes of former counsel.

Background

3. The Applicants herein were sued by the Respondent in Milimani MCCC E4668 of 2022 for a liquidated claim of Kshs 2,988,969.96/=. The Applicants entered an appearance through the firm of Messrs Salim Omar & Company Advocates, but failed to file a statement of defence. Consequently, an interlocutory judgment was entered, and the Respondent proceeded to execute. The Applicants filed an application dated 13.02.2023 seeking to set aside the interlocutory judgment and it was subsequently dismissed in a ruling delivered on 08.06.2023 by the trial court. The trial court having found the service proper and thus, the interlocutory judgment entered regular. The Respondent filed a garnishee order, which was granted; however, the funds were not available. This necessitated the Respondent to apply for a notice to show cause dated 03.10.2024, wherein warrants of arrest were issued by the trial court on 25.02.2025.

Respondent's Replying Affidavit

4. The Respondent's replying affidavit asserts that the Applicants' current application is predicated on a misapplication of facts and material non-disclosure, arguing that the Applicants were properly served with summons and entered appearance through their advocates in October 2022 but knowingly failed to file a defence, leading to the interlocutory judgment entered in December 2022. The Respondent notes that the Applicants' subsequent application to set aside that judgment was dismissed in June 2023 after the court confirmed that the Applicants were represented throughout the proceedings and failed to substantiate their claims of lack of service. The Respondent further highlights that execution proceedings commenced, including the attachment of movable assets, and that the 2nd Applicant appeared in court in November 2024 in relation to a Notice to Show Cause, where he sought time to provide a settlement proposal but failed to follow through. The affidavit maintains that the Applicants had ample time (a period spanning one year and nine months) to appeal the original judgment but failed to utilize this opportunity, and that by their conduct, including engaging in negotiations towards paying the decree, they cannot now seek to set aside the proceedings. Consequently, the Respondent submits that the application is a delaying tactic made in bad faith, intended only to obstruct the Respondent from realizing the benefit of the judgment awarded by the court.

Applicants' submissions

5. The Applicants' submissions urge the court to grant their application, which seeks three main prayers: to stay the warrants of arrest issued against the 2nd Applicant and all subsequent proceedings, to stay the orders resulting from the Notice to Show Cause, and to be granted leave to file and serve their record of appeal out of time. They contend that the intended appeal has valid grounds of success and is arguable, demonstrating a clear defence on the merits, including the existence of a triable issue and the assertion that the claim is partly settled and exaggerated. Crucially, the Applicants argue that the committal of the 2nd Applicant to civil jail is a drastic measure that jeopardizes his liberty and violates his fundamental right to a fair hearing, especially considering he was improperly enjoined into the suit as a director separate from the company. The submissions justify the delay in filing the appeal by placing the blame squarely on the mistakes, indolence, and lack of communication by their former advocates, a delay which they deem excusable, and to mitigate any prejudice to the Respondent, the Applicants propose to deposit security and are willing to pay the costs occasioned by the delay.



Respondent's submissions

6. The Respondent's submissions vehemently oppose the Applicants' Motion, arguing that the application, filed 20 months after the dismissal of the setting-aside application in June 2023, is fatally time-barred, unexplained, and constitutes a calculated abuse of the court process designed solely to frustrate the lawful execution of a final judgment. The Respondent contends that the Applicants offered no credible explanation for the inordinate delay, and their claim of changing advocates is unsustainable, especially given their active participation in post-judgment proceedings, including garnishee actions and engagement in settlement negotiations in November 2024, which demonstrates their full awareness of the judgment and their subsequent acquiescence to it, thereby waiving any right to appeal. Furthermore, the Respondent asserts that the warrants of arrest were lawfully issued following adherence to due process, including the issuance of a Notice to Show Cause, and were only enforced after the Applicants repeatedly defaulted on their obligations; therefore, the court is urged to dismiss the Motion with costs to safeguard the sanctity and integrity of judicial proceedings and ensure the Respondent can finally realize the fruits of the judgment.

Issues for determination

- a. Whether the Applicants have established a basis for stay of execution, including stay of the warrants of arrest.
- b. Whether the Applicants have established sufficient cause to warrant extension of time to file an appeal out of time under Section 79G of the *Civil Procedure Act*.
- c. Whether the Notice to Show Cause and subsequent warrants of arrest should be set aside.
- d. Who should bear the costs of the application.

Analysis & Determination

7. Generally, a stay of execution is provided under Order 42 Rule 6 of the Civil Procedure Rules 2010, which provides:
- “Notwithstanding anything contained in subrule (1) of this rule the High Court shall have power in the exercise of its appellate jurisdiction to grant a temporary injunction on such terms as it thinks just provided the procedure for instituting an appeal from a subordinate court or tribunal has been complied with.”
8. Applications for stay of execution requires the Applicant to demonstrate:
- i. Sufficient cause;
 - ii. That substantial loss may result if stay is not granted;
 - iii. That the application is brought without unreasonable delay; and
 - iv. Provision of security.
9. The Applicants argue that the committal of the 2nd Applicant to civil jail threatens his liberty and violates Article 50 of the *Constitution*, especially given their contention that they were denied an opportunity to participate in the lower court proceedings.



10. The Respondent counters that the warrants were issued after due process: A Notice to Show Cause was issued, the 2nd Applicant appeared in court in November 2024 and sought time to make proposals, which he did not honour. Thus, the warrants were a lawful progression of execution.
11. The Court is persuaded that civil jail is a drastic measure and that where liberty is at stake, the appellate court must lean on the side of caution to afford parties an opportunity to ventilate their appeal, but only where there is an arguable basis.
12. The Applicants have shown substantial loss in terms of deprivation of liberty. However, the court notes the delay of approximately 20 months does not favour them. Still, given the gravity of the liberty interest, the Court finds that a conditional stay is appropriate to avoid rendering the appeal nugatory.
13. Section 79G requires appeals from subordinate courts to be filed within 30 days, but allows extension where sufficient cause is shown. The principles governing enlargement of time include:
 - a. Length of delay;
 - b. Reason for delay;
 - c. Chances of success of the intended appeal;
 - d. Prejudice to the Respondent.
14. The delay from 08.06.2023 to 28.02.2025 is approximately 20 months, which is undeniably inordinate.
15. The Applicants blame their former advocates for not informing them of the ruling, not filing an appeal, and not prosecuting their defence. Mistake of counsel may be excusable where the litigant demonstrates diligence. Here, however, the Applicants subsequently participated in garnishee proceedings and attended court on the Notice to Show Cause in November 2024, meaning they were clearly aware of the decree long before filing the present Motion. The explanation, therefore, falls short of the required threshold.
16. The Applicants contend that only summons to enter appearance, not pleadings, were served. The trial court already made a factual finding that service was proper. Without a record of appeal before this Court, the “arguable” grounds remain unsubstantiated.
17. The Respondent has been attempting to realize a liquidated claim of approximately Kshs 3 million for over two years. Allowing extension after such a delay would significantly prejudice the Respondent’s right to enjoy the fruits of its judgment.
18. A Notice to Show Cause under Order 22 Rule 18 is a lawful tool allowing a judgment debtor an opportunity to explain why execution should not proceed.
19. The 2nd Applicant was served and appeared in court in November 2024, sought time to make proposals, and defaulted. That satisfies the requirement of an opportunity to be heard. There is therefore no procedural defect in the issuance of the warrants. Although the delay in bringing this application is considerable, the threat to liberty is real and immediate. The Court therefore finds that the threshold of substantial loss is satisfied, and that this is an appropriate case for a conditional stay, so that the Applicants can ventilate their intended appeal without the looming risk of committal.
20. However, given that the Court has granted a conditional stay to safeguard the liberty interest pending possible appellate steps, the warrants shall not be set aside, but kept in abeyance during the subsistence of the stay.



1. Costs follow the event. The Applicants have succeeded only partially (on stay).
2. Consequently, the Notice of Motion dated 28.02.2025 is allowed in part as follows:
3. A temporary stay of execution, including the warrant of arrest issued on 25.02.2025, is hereby granted on the following conditions:
 - a) The Applicants shall deposit the entire decretal sum in court within 14 days;
 - b) The Applicants shall file and serve a draft memorandum of appeal within 7 days;
 - c) Failure to comply with any of the above conditions shall automatically vacate the stay without further reference to the Court.
4. The warrants of arrest are not set aside, but their enforcement is suspended solely due to the temporary stay granted above.
5. Costs of this application are awarded to the Respondent.
6. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 18TH DAY OF DECEMBER 2025

LINUS P. KASSAN

JUDGE

In the presence of:-

Bundi for the Applicant

Mr Mutunga for the Respondent

Carol - Court Assistant

