



**Kiambaa Primary School v Omuzee (Appeal E047 of 2025)
[2025] KEELRC 3719 (KLR) (22 December 2025) (Ruling)**

Neutral citation: [2025] KEELRC 3719 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET
APPEAL E047 OF 2025
MA ONYANGO, J
DECEMBER 22, 2025**

BETWEEN

KIAMBAA PRIMARY SCHOOL APPELLANT

AND

SIMON OMUZEE RESPONDENT

RULING

1. Before the court for determination is an application dated 25th June, 2025 brought under section 3, 3A and 79G of the *Civil Procedure Act*, Order 50 Rule 6, Order 42 Rule 6 Order 51 Rule 1 of the Civil Procedure Rules. The Appellant seeks for orders that:
 - a. Spent.
 - b. That pending the hearing and determination on of this application interparty, the Court be pleased to order a stay of execution and any further proceedings in Eldoret CMELRC No.48 of 2020 Simon Omuzee vs Kiambaa Primary school.
 - c. That pending the hearing and determination of this application interparty, this Honourable Court be pleased to grant leave to the applicant to lodge an Appeal from judgment and decree of the Chief Magistrate in Eldoret CMELRC No. 48 of 2020 Simon Omuzee vs Kiambaa Primary school out of time the same having been delivered by the trial court on 19th March 2025.
 - d. That the Court be pleased to order a stay of execution and stay further proceedings in Eldoret CMELRC No. 48 of 2020 Simon Omuzee vs Kiambaa Primary School pending the hearing and determination of the intended Appeal.
 - e. That this Honourable court be please to grant leave to the Applicant to lodge an Appeal from judgment and decree of the Chief Magistrate in Eldoret CMELRC No. 48 of 2020 Simon



Omuzee vs Kiambaa Primary school out of time the same having been delivered by the trial court on 19th March 2025.

- f. Costs be provided for.
2. The application is premised on the grounds set out on the face thereof and the supporting affidavit of PHYLIP KORIR, the Head Teacher and Secretary to the Board of the Appellant, sworn on 25th June, 2025. In summary, the Appellant states that it is aggrieved by the judgment in CMELRC No. 48 of 2020 Simon Omuzee v Kiambaa Primary School delivered on 19th March, 2025, that the court granted a temporary stay of execution of 30 days which lapsed on 22nd April, 2025, that the State Counsel who is representing the Applicant agreed with the Applicant that the state should lodge an appeal, that the delay is not deliberate but was occasioned by factors beyond the control of the Applicant, that by the time the State Law Office received instructions to lodge the appeal the statutory time for lodging appeal had lapsed, that the Applicant subsequently filed an application for stay of execution dated 6th May, 2025 before the trial court seeking stay of execution and leave to lodge appeal out of time which was struck out on grounds that it had been filed before the wrong forum, that the striking out was not on the merits, but on procedural jurisdictional grounds, that unless the orders sought are granted the appeal will be rendered nugatory and the Applicant will suffer substantial loss, that the intended appeal is arguable and has overwhelming chances of success and is instituted in good faith, that the Respondent will not suffer any prejudice if the orders sought are granted.
3. The application is opposed by the Respondent who filed a replying affidavit sworn on 8th July, 2025 in which he contends that the application before the court is fatally defective as the Applicant should have moved the court through a miscellaneous application seeking leave of court to file the intended appeal out of time, that the Applicant had sufficient time to file the appeal in time but failed to do so within the stipulated timelines, that the application and appeal are an afterthought as communication to the school was done before the lapse of time for filing appeal, that the application in the trial court for leave was filed out of time two months after the judgement and it took the Applicant a further 3 months to lodge the instant application, that the Applicant is trying to seal loopholes discovered after the initial application for stay which was dismissed by the trial court, that the instant application and the appeal are intended to frustrate the Respondent and to delay the course of justice, and is thus an abuse of court process.
4. The application was disposed of by way of written submissions. Both parties filed and exchanged submissions which I have considered.

Determination

5. The issues for determination flowing from the application, affidavits and submissions on record are whether the Appellant meets the threshold for enlargement of time for filing appeal, whether the Appellant meets the threshold for grant of stay of execution and who should pay costs of the application.
6. On the issue whether the Appellant meets the threshold for enlargement of time the Appellant submitted that section 79G of the *Civil Procedure Act* provides that appeals from subordinate courts be filed within 30 days from the date of the decree or orders appealed against excluding any period the lower court may certify as having been requisite for the preparation and delivery of a copy of the decree or order provided that the appeal may be admitted out of time if the appellant satisfies the court that it had good and sufficient cause for the delay in filing the appeal in time.
7. Order 50 Rule 6 of the Civil Procedure Rules provides for the enlargement of time upon such terms as justice of the case may require.



8. The Applicant submits that Rule 80 of the Employment and Labour relations Court (Procedure) Rules empowers the court to enlarge time prescribed in the rules where sufficient cause is shown by the Applicant. Relying on the decisions in *Nicholas Kiptoo Arap Korir Salat v IEBC & 7 others* [2014] eKLR and *Leo Sila Mutiso v Rese Hellen Wangari Mwangi* [1999] 2 EA 231 the Applicant submits that it received formal notification of the judgment on 26th March, 2025 and immediately thereafter the Board convened to deliberate on the implications of the judgment and resolved to instruct the Office of the Attorney General to lodge appeal. That owing to administrative procedures required of public institutions including approval of litigation by the Board and compliance with public financial regulations the instructions and supporting documents were issued after the statutory period had lapsed.
9. It is submitted that the application before the trial court was struck out purely on jurisdictional grounds. That the foregoing sufficiently explain the delay in moving this court.
10. It is submitted that in *Gerald Mugo & another v Timothy Maina Kimani* [2021] eKLR the court recognized that delay resulting from administrative process within public institutions may constitute sufficient cause when it held that in dealing with public institutions a court must be alive to the bureaucratic process involved in making decisions. That such delay where explained should not be held against an applicant who has otherwise acted with diligence.
11. The Applicant further submitted that the court held in *Mwangi v Kenya Airways* that extension of time should be granted unless it would prejudice the Respondent in a way that cannot be remedied by an award of costs.
12. It is submitted that the Applicants draft memorandum of appeal raises weighty issues for determination by this court.
13. The Respondent on the other hand submitted that the delay of more than 3 months in filing the instant application is substantial and has not been explained relying on the decision in *John Martin Muchiri Mugo v British American Insurance Company (K) Limited* [2018] eKLR. The Respondent further relied on the decision in *Maree Ahmed & another v Leli Chaka Ngoro* [2017] KEHC 1860 (KLR).
14. As expressed in the cases cited by the parties, delay must be sufficiently explained. In the present case the Applicant explains that there was need for the Board of the Respondent to meet to pass a resolution to appeal. Further, that there were other bureaucratic processes that had to be navigated before the instructions were issued to the Attorney General.
15. I am satisfied that there was no deliberate delay and that the delay is reasonable taking into account that the Applicant is a public primary school where decisions such as lodging appeal must be made by resolution of the Board.
16. On the second issue whether the Appellant meets the threshold for grant of orders of stay of execution, Order 42 Rule 6 of the Civil Procedure Rules, 2010 provides as follows:

“SUBPARA (1) No appeal or second appeal shall operate as a stay of execution or proceeding 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.”

17. An Applicant must thus demonstrate: -

- a. that substantial loss may result to the applicant unless the order is made
- b. that the application has been made without unreasonable delay
- c. offer security as the court orders for the due performance

18. The Appellant has submitted that the Respondent has no known means of refunding the decretal amount should the Appellant be compelled to pay the same to her. This in my view is sufficient cause to grant orders of stay of execution.

19. With regard to the issue of security for due performance, the Appellant is a government institution and is an exempted from the requirement to deposit security by virtue of Order 42 Rule 8 of the Civil Procedure Rules which provides:

“No such security as is mentioned in rules 6 and 7 shall be required from the Government or where the Government has undertaken the defence of the suit or from any public officer sued in respect of an act alleged to be done by him in his official capacity.”

20. Further, section 21(4) of the [Government Proceedings Act](#) provides: -

“Save as aforesaid, no execution or attachment or process in the nature thereof shall be issued out of any such court for enforcing payment by the Government of any such money or costs as aforesaid, and no person shall be individually liable under any order for the payment by the Government, or any Government department, or any officer of the Government as such, of any money or costs.”

21. Flowing from the above I find that the Appellant has satisfied this court on the requirements for grant of both expansion of the time for filing appeal and grant of orders of stay of execution pending hearing and determination of the appeal as stipulated under Order 42 Rule 6 of the Civil Procedure Rules.

22. Consequently, I allow the application dated 25th June, 2025. The costs of this application shall be borne by the Appellant in any event, irrespective of the outcome of the Appeal.

23. It would be remiss of me not to point out that both the court appealed from and the court to which the appeal is preferred have concurrent jurisdiction to grant orders of stay of execution as is expressly provided in Order 42 Rule 6 of the Civil Procedure Rules, 2010 provides:

“(1) No appeal or second appeal shall operate as a stay of execution or proceeding 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.

24. The trial court thus had jurisdiction to grant orders of stay of execution of its judgement and decree and should not have struck out the Appellant's application on grounds of jurisdiction.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 22ND DAY OF DECEMBER, 2025.

M. ONYANGO

JUDGE

