



REPUBLIC OF KENYA



**Mungania v Makinya & another (Miscellaneous Civil Application
E070 of 2025) [2025] KEHC 18707 (KLR) (16 December 2025) (Ruling)**

Neutral citation: [2025] KEHC 18707 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
MISCELLANEOUS CIVIL APPLICATION E070 OF 2025
SM GITHINJI, J
DECEMBER 16, 2025**

BETWEEN

SAMSON MURUNGI MUNGANIA APPLICANT

AND

SILAS B.M. MAKINYA 1ST RESPONDENT

STEPHEN NYAMU T/A LIFELINE AUCTIONEERS 2ND RESPONDENT

RULING

1. For determination is the Notice of Motion dated 9/6/2025 brought under Order 43 Rule 1 and Order 50 Rule 1 of the Civil Procedure Rules and sections 7 and 75 (1) of the Civil Procedure Act and Article 50 (1) of the Constitution, seeking that:
 1. Spent
 2. The applicant be granted leave by this Honorable Court to file an appeal out of time against the Respondents seeking orders for stay of execution pending the hearing and determination of the appeal.
 3. If the orders sought are not granted by this Hon. Court, I stand to suffer serious loss and damage for I shall suffer double tragedy.
 4. Costs of this application be costs in the intended appeal.
2. The application is premised on the grounds that Nairobi Co-operative Tribunal Civil Suit No. 623/2016 was heard ex-parte and judgment issued in the absence of the Applicant. He was neither served with the hearing notice nor the pleadings therein, contrary to the directions of the Hon. Tribunal of 12/6/2018, and he only learnt of the matter when the 2nd Respondent went to his home on 28/5/2025 with the decree and warrants of attachment of movable properties. He then applied and paid for the certified copies of the proceedings on 4/6/2025, which were never availed. The 1st



Respondent, who is a frivolous, vexatious and malicious litigant, filed Nairobi Co-operative Tribunal Case No. 104/2017, wherein judgment was entered against him on 5/3/2020, and it is fair to preserve the properties until the matter is heard on merit.

3. The 1st Respondent swore a replying affidavit on 4/9/2025 in opposition to the application. He insisted that the Applicant was served with the mention notice dated 28/9/2022 and the court's directions of 21/9/2022, but he deliberately failed to attend court on 17/1/2024, despite being fully aware of the said date, and the matter proceeded ex parte. The application was filed in June 2025, yet the impugning judgment was delivered on 17/1/2024, and the instant application and the intended appeal are an afterthought, a delay tactic and a ploy to prevent him from enjoying the fruits of his judgment. The Applicant has not annexed the draft memorandum of appeal to enable the court to determine whether his appeal is arguable, and he is thus undeserving of the orders sought.
4. The Applicant swore a further affidavit on 17/9/2025 in support of his application.

The 2nd application

5. The 2nd application is dated 29/9/2025 under sections 3A and 63 C and E of the [Civil Procedure Act](#) and Order 40 Rules 3.1 and 4.1 of the Civil Procedure Rules, seeking that;
 1. The Respondents herein be committed to civil jail for disobedience of Court Orders dated 10/06/2025 and 02/07/2025 in Application dated 09/06/2025.
 2. Once contempt of court Orders are issued, the same be served upon O.C.S Meru police station to ensure compliance.
 3. The costs of this application be provided for.
6. The application is premised on the grounds that the 2nd Respondent refused to release the motor vehicle to the Applicant despite clear instructions from the 1st Respondent's advocate, who was acting on the court orders of 10/6/2025, on account of unpaid storage charges.
7. The 1st Respondent swore a replying affidavit on 1/10/2025 in opposition to the application. He averred that on 2/7/2025, the court ordered that the Applicant's motor vehicle registration No. KAC 184 Q be released to him, which he fully complied with as shown in the exhibited letters dated 2/7/2025 and 11/7/2025, and prayed for the dismissal of the application with costs.
8. The applications were canvassed by way of written submissions, which were filed by the Applicant and counsel for the 1st Respondent only.

Determination

9. The singular issue for determination is whether the orders sought should be granted.
10. The underlying principles that a court should consider in the exercise of its discretion to extend time were underscored by the Supreme Court in *Nicholas Kiptoo Korir Arap Salat v Independent Electoral & Boundaries Commission & 7 others* (2014) eKLR, as follows: "1. Extension of time is not a right of a party. It is an equitable remedy that is only available to a deserving party at the discretion of the Court; 2. A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the court; 3. Whether the court should exercise the discretion to extend time, is a consideration to be made on a case to case basis; 4. Whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the Court; 5. Whether there will be any prejudice suffered by the respondents if the extension is granted; 6. Whether the application has been brought without undue



- delay; and 7. Whether in certain cases, like election petitions, public interest should be a consideration for extending time.”
11. The instant application was filed on 9/6/2025, while the impugning judgment was delivered on 17/1/2024. That delay of approximately 1 year 5 months is manifestly inordinate and therefore unreasonable. The Applicant belatedly applied and paid for certified proceedings on 4/6/2025, which he contends were never supplied. I find that the reason for the delay has not been sufficiently explained.
 12. The 1st Respondent has exhibited 4 Affidavits of Service sworn by Geoffrey Mutuma Muthuri, an Advocate of the High Court of Kenya, on 29/11/2022, 15/8/2023, 20/11/2023 and 16/1/2024 evincing service of Mention and Hearing Notices upon the Applicant on varied dates. The Applicant’s contention of non-service is thus misleading and can only be taken with a pinch of salt.
 13. Suffice to add, the Applicant has not exhibited a draft memorandum of appeal, to enable me determine whether the intended appeal is arguable or not.
 14. In *Nicholas Kiptoo Arap Korir Salat v Independent Electoral and Boundaries Commission & 7 Others* (2014) eKLR, the Supreme Court espoused that: “Where one intends to file an appeal out of time and seeks extension of time, the much he can do is to annex the draft intended petition of appeal for the court’s perusal when making his application for extension of time, and not to file an appeal and seek to legalize it. Petition No 10 of 2014 having been filed out of time and without leave (an order of this court extending time) is expunged from the court’s record.”
 15. Comparatively in *County Government of Murang’a & another (Sued as County Secretary County Government of Murang’a) v Njoroge* [2022] KECA 403 (KLR), the Court of Appeal stated as follows: “With regard to the merit of the intended appeal, it is sufficient for the applicant to demonstrate that he or she has an arguable appeal with the likelihood of success. In the absence of a draft memorandum of appeal or other material disclosing the grounds on which the intended appeal is to be anchored, I am unable to draw a reasonable conclusion that the intended appeal is arguable with the possibility of success. Indeed the application before me turns on my finding on this critical issue and no useful purpose would be served by a scrutiny of the remaining issues. For the avoidance of doubt, though I find that the applicants have sufficiently explained the reason for delay in filing their appeal; that the delay is, in the circumstances of this case, not inordinate; and that the respondent would not be prejudiced by extension of time to file the intended appeal. However, my findings on this account do not cure the fatal defect in failing to supply the court with a draft memorandum or other material setting out the grounds on which the intended appeal is preferred.”
 16. It is apparent that, in the absence of a draft memorandum of appeal, there is no basis upon which the arguability or otherwise of the Applicant’s intended appeal can be properly gauged.
 17. Having denied the quest for enlargement of time to appeal, there is no basis for the grant of stay.
 18. The record shows that the Respondents were not aware of the orders of stay of 10/6/2025. Admittedly, the Applicant served the directions of 10/6/2025 upon the Respondents on 11/6/2025, several hours after the attachment of his motor vehicle. Consequently, the Respondents cannot be found to have been in contempt of the court orders of 10/6/2025, as they were unaware of them at the material time.
 19. The upshot from the foregoing is that the applications dated 9/6/2025 and 29/9/2025 are in want of merit and they are hereby dismissed with costs to the Respondents.

DATED AND DELIVERED AT MERU THIS 16TH DAY OF DECEMBER, 2025

S.M. GITHINJI



JUDGE

Appearances:-

Applicant - Present in Person.

Respondent - Absent.

