



REPUBLIC OF KENYA



**KENYA LAW**  
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**Wa Gakui v Wambui & another (Civil Appeal E309 of 2023)  
[2025] KEHC 18701 (KLR) (Civ) (18 December 2025) (Ruling)**

Neutral citation: [2025] KEHC 18701 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CIVIL**

**CIVIL APPEAL E309 OF 2023**

**LP KASSAN, J**

**DECEMBER 18, 2025**

**BETWEEN**

**NDURUMO WA GAKUI ..... APPLICANT**

**AND**

**JOSEPHINE WAMBUI ..... 1<sup>ST</sup> RESPONDENT**

**KAGUNYI JOHN ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. The Applicant's Notice of Motion dated 25.02.2025 seeks two substantive orders. First, he seeks extension of time to file an Appeal out of time against the judgment of this Court delivered on 26.07.2024 in HCCA No. E309 of 2023, by which the appeal was dismissed with costs to the Respondents. Second, he seeks an order for stay of execution of the said judgment pending the hearing and determination of the intended appeal. The application is supported by the affidavit of Ndurumo Wa Gakui, who avers that he is aggrieved by the decision of this Court and desires to challenge it before the Court of Appeal. He deposes that immediately after delivery of judgment, his advocates applied for certified proceedings on 06.08.2024, that the court notified counsel on 26.09.2024 that the proceedings were ready, and that the same were collected on 27.09.2024. He relies on the Certificate of Delay issued by the Deputy Registrar confirming that the court required a period of fifty days to prepare and deliver the typed proceedings. He asserts that the delay in filing the Notice of Appeal was not deliberate but was occasioned by circumstances beyond his control. He further contends that the intended appeal raises arguable issues and that unless stay of execution is granted, the Respondents will proceed with execution for costs, thereby occasioning him substantial loss.
2. The application is opposed through the Replying Affidavit of C. Wanjiru Kariuki sworn on 27.06.2025. The Respondents contend that the Applicant has failed to demonstrate sufficient cause to warrant extension of time and that he did not act diligently after delivery of judgment. They argue



that the Applicant and his advocates were aware of the judgment from the date it was delivered and that under the Court of Appeal Rules, a notice of appeal ought to have been lodged within fourteen days. According to the Respondents, the delay is inordinate, the application is an afterthought, and the intended appeal has no prospects of success, the High Court judgment having been well reasoned. With regard to stay of execution, they submit that the Applicant has not met the threshold under Order 42 Rule 6 of the Civil Procedure Rules and has failed to demonstrate substantial loss.

3. I have carefully considered the application, the rival affidavits, the annexures thereto, including the request for proceedings and the Certificate of Delay, as well as the submissions on record. The judgment sought to be appealed against was delivered by this Court on 26.07.2024. It is not in dispute that the Applicant did not lodge a Notice of Appeal within the fourteen days prescribed under Rule 77(2) of the Court of Appeal Rules. The Applicant now seeks extension of time to lodge an Appeal out of time.
4. The first issue that arises is whether this Court has jurisdiction to entertain the prayer seeking extension of time to file a Notice of Appeal to the Court of Appeal. While it is settled that the Court of Appeal exercises wide and unfettered discretion under Rule 4 of the Court of Appeal Rules, Section 7 of the *Appellate Jurisdiction Act* (Cap 9) expressly vests in the High Court the power to extend the time for giving notice of intention to appeal from a judgment of the High Court, notwithstanding that the time for giving such notice may have already expired. That statutory provision remains in force and has not been ousted by the Court of Appeal Rules. The jurisdiction conferred by Section 7 is, however, limited in scope. It extends only to enlargement of time for filing a Notice of Appeal or for making an application for leave or a certificate that a matter is fit for appeal. It does not extend to enlargement of time for filing the Record of Appeal, which remains within the exclusive province of the Court of Appeal. Accordingly, this Court is properly seized of the Applicant's prayer to extend time for filing a Notice of Appeal out of time.
5. In exercising this discretion, the Court is guided by the principles set out in *Leo Sila Mutiso v Rose Hellen Wangari Mwangi Civil Application No. 251 of 1997 at Nairobi* and as reaffirmed by the Supreme Court in *Salat v Independent Electoral and Boundaries Commission & 7 others (Application 16 of 2014) [2014] KESC 12 (KLR) (Civ) (4 July 2014) (Ruling)*, namely the length of the delay, the reason for the delay, the arguability of the intended appeal, the degree of prejudice to the Respondents, and the overarching interests of justice.
6. The explanation offered by the Applicant is that immediately after delivery of judgment, his counsel applied for typed proceedings on 06.08.2024, and that the court required a period of fifty days to prepare and deliver the same, as confirmed by the Certificate of Delay issued by the Deputy Registrar. The proceedings were collected on 27.09.2024. I have examined the Certificate of Delay, which expressly states that the period between 06.08.2024 and 26.09.2024 was required for preparation and delivery of certified proceedings. While the Respondents contest reliance on this Certificate on the basis that a previous attempt to rely on it before the High Court did not succeed, the fact remains that the Certificate forms part of the record and constitutes administrative confirmation of the time taken by the court to prepare the proceedings. The Applicant cannot be penalized for delay occasioned by the court registry.
7. After receipt of the proceedings on 27.09.2024, the Applicant filed the present application on 25.02.2025. Although this period is not insignificant, I do not find it inordinate in the circumstances of this case. The Applicant was entitled to time to peruse the proceedings, seek legal advice, and settle the grounds of the intended appeal. He has annexed a draft memorandum of appeal raising issues relating to liability, evaluation of evidence, and the conclusions reached by this Court. Without delving into the merits, I am satisfied that the intended appeal is arguable and not frivolous.



8. As regards stay of execution, the judgment of this Court dismissed the appeal and awarded costs to the Respondents, thereby entitling them to proceed with taxation and execution. The Applicant has demonstrated that execution for costs is imminent and that unless stay is granted, he is likely to suffer substantial loss before he can ventilate his grievance before the Court of Appeal. The Respondents have not demonstrated any prejudice that cannot be compensated by costs should stay be granted. I am satisfied that the Applicant has met the threshold under Order 42 Rule 6 of the Civil Procedure Rules.
9. Balancing the competing interests of the parties and guided by the constitutional imperative under Article 159 of the *Constitution* to administer justice without undue regard to procedural technicalities, I am persuaded that the justice of the case requires that the Applicant be accorded an opportunity to pursue his intended appeal while preserving the subject matter.
10. In the result, I make the following orders:
  - i. The prayer for stay of execution of the judgment delivered on 26.07.2024 is hereby declined. The Court further notes that the judgment of this Court dismissed the appeal and awarded costs to the Respondents, and that any execution arising therefrom is in respect of costs and is to be undertaken before the subordinate court, which issued the original decree. In the circumstances, the Applicant has failed to demonstrate sufficient basis to warrant the exercise of this Court's discretion in his favour. The Court notes that the Applicant has not offered any security for the due performance of the decree, as mandatorily required under Order 42 Rule 6(2)(b) of the Civil Procedure Rules.
  - ii. Time for filing a Notice of Appeal against the judgment delivered on 26.07.2024 is hereby extended, and the Applicant shall file and serve the Notice of Appeal within seven (7) days from the date of this order.
  - iii. Costs of this application shall abide the outcome of the intended appeal.

**DATED, SIGNED AND DELIVERED VIRTUALLY THIS 18<sup>TH</sup> DAY OF DECEMBER 2025.**

**LINUS P. KASSAN**

**JUDGE**

In the presence of:-

Wakesa for Appellant/Applicant

No appearance for Respondent

Carol – Court Assistant

