



REPUBLIC OF KENYA



**Carlo v Mwananchi Credit Limited (Civil Appeal E192 of 2025)
[2026] KEHC 409 (KLR) (Commercial and Tax) (23 January 2026) (Ruling)**

Neutral citation: [2026] KEHC 409 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL APPEAL E192 OF 2025
FG MUGAMBI, J
JANUARY 23, 2026**

BETWEEN

WAFULA CASSINA CARLO APPELLANT

AND

MWANANCHI CREDIT LIMITED RESPONDENT

RULING

Background and Introduction

1. The Appellant, who is also the Applicant in the application dated 23rd June 2025 seeks an order for stay of execution of the ruling delivered by Hon. Rawlings Liluma Musiega on 5th May 2025, pending the hearing and determination of the intended appeal. In addition, he prays that the Court grants him leave to file the intended appeal out of time.
2. The application is opposed by way of a Replying Affidavit sworn on 30th June 2025 by Saleh Jackline, the Respondent's Legal Administrator and Analyst.

Analysis and Determination

3. I have equally considered the written submissions filed by both parties. The first issue for determination is whether the Applicant has established a sufficient basis for leave to file the appeal out of time under Section 79G of the *Civil Procedure Act*. That provision stipulates that every appeal from a subordinate court to the High Court shall be lodged within thirty days, but further provides that an appeal may be admitted out of time if the appellant demonstrates good and sufficient cause for the delay.
4. The grant of leave under this section is a discretionary power, though one that must be exercised judiciously. The Supreme Court, in *Nicholas Kiptoo Arap Korir Salat V Independent Electoral and Boundaries Commission & 7 Others*, [2014] eKLR, comprehensively restated the principles guiding



- the exercise of such discretion. The Court emphasized that while the discretion is unfettered, the applicant bears the burden of explaining the delay and showing whether extenuating circumstances exist to warrant the Court's indulgence.
5. In the present case, the Applicant attributes the delay to financial constraints, the need to obtain legal advice, and the time taken to secure a typed copy of the ruling. The Respondent has not directly addressed these grounds, save to dismiss them as an afterthought intended to circumvent the Applicant's obligations.
 6. In my view and under the circumstances, to deny the Applicant leave would amount to shutting the door of justice prematurely, particularly where he asserts that he has an arguable appeal. I am therefore inclined to extend the benefit of doubt to the Applicant and grant leave to file the appeal out of time, having regard to the grounds set out in the Memorandum of Appeal dated 16th May 2025. Whether the appeal ultimately succeeds is a matter reserved for the appellate stage, and the objections raised by the Respondent shall be canvassed and determined at that juncture.
 7. As to the prayer for stay of execution, Order 42 Rule 6 of the Civil Procedure Rules sets out the legal framework under which a party may seek a stay of execution of a decree or judgment pending appeal. The Rule makes clear that the filing of an appeal does not, of itself, operate as a stay of execution. Nonetheless, the Court retains discretion to grant a stay where sufficient cause is shown.
 8. For a party to succeed, three conditions must be satisfied. First, the applicant must demonstrate that substantial loss is likely to be suffered if the order for stay is not granted. Second, the application must be made without unreasonable delay. Third, the applicant must provide security for the due performance of the decree or order that may ultimately be binding upon them.
 9. Accordingly, the purpose of the Rule is to strike a balance between two competing interests: on the one hand, safeguarding the right of an appellant to pursue an appeal without the risk of the judgment being executed prematurely; and on the other, protecting the right of the successful party to enjoy the fruits of their judgment. This rationale was aptly stated in *RWW V EKW*, [2019] eKLR.
 10. Applying these principles to the present matter, I note that the impugned Ruling was delivered on 2nd May 2025, and the present application was filed approximately one month thereafter. I do not consider this delay to be inordinate.
 11. Secondly, the said Ruling directed the Applicant to avail Motor Vehicle Registration No. KCQ 844K to the Central Police Station for safe custody pending determination of the dispute. Given that the subject matter of the appeal is a motor vehicle, which is inherently prone to depreciation, there exists a real risk that, should the Applicant succeed, the value of the vehicle will have diminished to his detriment.
 12. In light of the balance test articulated above, I am persuaded that a stay of execution is warranted. However, to safeguard the Respondent's interests, I direct that the Applicant deposit security equivalent to the amount claimed, namely Kshs. 3,201,413.86. This will ensure that, should the appeal fail, the Respondent is assured of payment of any sum found to be due.

Disposition

13. The application dated 23rd June 2025 succeeds:
 - i. The Applicant is granted leave to file the intended appeal out of time.
 - ii. There shall be a stay of execution of the ruling delivered on 2nd May 2025 by Hon. Rawlings Liluma Musiega, pending the hearing and determination of the appeal.



iii. The stay of execution is conditional upon the Applicant depositing security in the sum of Kshs. 3,201,413.86 in a joint interest earning account held in the names of both Counsels within thirty (30) days from the date hereof. In default of compliance with the condition on security, the order of stay shall lapse automatically.

iv. Costs of this application shall abide the outcome of the appeal.

DATED, SIGNED AND DELIVERED IN NAIROBI THIS 23RD DAY OF JANUARY 2026.

F. MUGAMBI

JUDGE

Delivered in presence of:

Mr Isoe for the respondent

Mr Mutonyi for the applicant/appellant

Court Assistant: Lillian

