



**Etirika v Meru Teachers House Limited (Miscellaneous Civil Application
E039 of 2025) [2026] KEHC 419 (KLR) (22 January 2026) (Ruling)**

Neutral citation: [2026] KEHC 419 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
MISCELLANEOUS CIVIL APPLICATION E039 OF 2025
HM NYAGA, J
JANUARY 22, 2026**

BETWEEN

STEPHEN NTUBIRI ETIRIKA APPLICANT

AND

MERU TEACHERS HOUSE LIMITED RESPONDENT

RULING

1. By a notice of motion dated 28th April 2025, the Applicant seeks for orders that: -
 - a. Spent
 - b. This Honourable Court be pleased to grant the Applicant leave to appeal out of time against the ruling of Hon. S. Ndegwa in Meru Chief Magistrates Court Civil Suit No. E014 of 2023 delivered on 17/12/2024.
 - c. This Honourable Court be pleased to grant an order of stay of execution the decree dated 19/4/2023 pending the hearing and determination of the intended Appeal herein.
 - d. That the costs of this Application be in the cause.
2. The Application is predicated on grounds on its face and supported by an affidavit of the Applicant sworn on even date.
3. It is his deposition that he got wind of the matter in the lower court in the month of August 2024, after the ex parte judgment had been delivered. That his advocate filed an application dated 15/8/2024 seeking to set aside the said judgment but the application was dismissed on 17/12/2024. That his advocate requested for copies of the judgment in the lower court for purposes of filing an appeal.
4. The applicant further avers that he believes the intended appeal has very high chances of success and states that the application has been made without unreasonable delay. That the orders are sought in



- the interest of equity and justice and that no prejudice will be suffered by the respondent if the orders are granted. That he is ready and willing to abide by any terms or conditions that the court may set.
5. In response to the Application, the respondent filed a Replying Affidavit sworn by one Eliphas Mugambi Kamura, who is its Chairman, on 15th May 2025. He avers that the application is premised on lies and that the applicant is notorious for not honouring court orders. That the applicant was duly served with the summons and pleadings in the suit before the lower court, but he did not enter appearance or file defence. That after judgment was entered, the applicant was duly served with a notice thereof. That the applicant's advocate was fully aware of the ruling delivered on 17/12/2024 and that since it was delivered via email, the applicant did not need to request for the copies thereof.
 6. It is further averred that the applicant has not explained the reason for the delay in making this application after three months from the date of the ruling in question and that he only moved the court after a notice to show cause was issued against him. That the respondent will be prejudiced by the orders sought as it has expended time and resources to prosecute the suit in the lower court. That the Application is a clear abuse of the court process. That the applicant has not offered any security as is required when seeking a stay of execution of a money decree.
 7. The Application was canvassed through written submissions.
 8. For the applicant, it was submitted that there was no unreasonable delay in filing the application and that sufficient grounds have been presented.
 9. On the principles to be applied in considering whether to extend time or not, the applicant cited the decisions in *County Executive of Kisumu vs County Government of Kisumu and 8 others (2017)eKLR*, in *Omar Shurie vs Marian Rushe Yafar (2020)eKLR* and *Thita Mwangi vs Kenya Airways Ltd. (2003) eKLR*.
 10. On the question of stay of execution, the applicant cited the decision in *Butt vs Rent Restriction Tribunal (1982) KLR 5417* and *James Wangalwa and another vs Agnes Nalika Chereto (2012) eKLR*.
 11. The applicant further submitted that considering the circumstances of the case and the reasons adduced, it was only fair that the orders sought be granted.
 12. For the Respondent it was submitted that the applicant had failed to satisfy the requirements under section 79G of the *Civil Procedure Act* as set out in the case of *Diplack Kenya Limited vs William Muthama Kitonyi (2018) eKLR*. The respondent also cited the case of *Nichlas Kiptoo Arap Salat vs IEBC and 7 others (2014) eKLR*.
 13. Citing *Paul Musili Wambua vs Attorney General (2015) eKLR* it was submitted that the applicant ought to have provided sufficient reasons for the delay in filing the application, which did not happen. That the delay was unreasonable as the applicant has only moved the court after three months from the date of delivery of the ruling in question.
 14. It is further submitted that the intended appeal has no chance of success.
 15. The Respondent further submitted that the applicant has not met the threshold set out under Order 42 Rule 1 of the Civil Procedure Rules on the grant of stay pending appeal as reiterated in *Gitau vs Kagiri (2024) eKLR*, *Njenga vs Njeri (2023) eKLR* and *Kenya Shell Limited vs Benjamin Karuga Kibiru and another (19918) eKLR*.
 16. In conclusion it was submitted that the application is an abuse of the court process and incompetent. The respondent urged this court to dismiss the same with costs.



Analysis & determination

17. The issues that arises for determination are:-
 - a. Whether the application seeking leave to appeal out of time is merited.
 - b. Whether stay orders sought should be granted
18. I will address the above issues seriatim.
19. Section 79G of the *Civil Procedure Act* provides that:

“Every appeal from a subordinate court to the High Court shall be filed within a period of thirty days from the date of the decree or order appealed against, excluding from such period any time which the lower court may certify as having been requisite for the preparation and delivery to the appellant of a copy of the decree or order. Provided that an appeal may be admitted out of time if the appellant satisfies the court that he had good and sufficient cause for not filing the appeal in time.”
20. The Supreme Court of Kenya in the case of County Executive of Kisumu vs County Government of Kisumu & others [supra], while relying to its decision in the case of Nicholas Kiptoo Arap Korir Salat vs IEBC & 7 others (supra) reiterated the considerations to be made in such a case to be as follows:
 - a. 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;
 - b. A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the court;
 - c. Whether the court should exercise the discretion to extend time, is a consideration to be made on a case to case basis;
 - d. Whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the Court;
 - e. Whether there will be any prejudice suffered by the respondents if the extension is granted;
 - f. Whether the application has been brought without undue delay; and
 - g. Whether in certain cases, like election petitions, public interest should be a consideration for extending time.”
21. Therefore, while the court has the discretion to extend time, such discretion must be exercised within the principles of the law and factors set out above. The principles to be considered were amplified by the Court of Appeal in the case of Omar Shurie vs Marian Rashe Yafar (supra) where it was held:

“It is now well settled that the decision whether or not to extend the time for appealing is essentially discretionary. It is also well settled that in general the matters which this Court takes into account in deciding whether to grant an extension of time are: first the length of the delay, secondly, the reason for the delay; thirdly (possibly) the chances of the appeal succeeding if the application is granted; and, fourthly, the degree of prejudice to the respondent if the application is granted.”



22. It is not disputed that the judgment in the lower court was entered on 31/7/2024. The ruling in question was delivered on 17/12/2024. The Applicant therefore ought to have filed his appeal on or before 15/1/2025 and one takes into consideration the period excluded in computation of time, then then appeal should have been filed by 10th February 2025. That was not done. The reasons given for failure to lodge an appeal within the stipulated time is that the applicant had requested for copies of the ruling. The letter requesting for the ruling is dated 7/4/2025, well outside the period set for filing an appeal.
23. It appears like the applicant only moved this court after the respondent commenced the execution of the decree. That is a clear sign that the applicant was indolent in pursuing his right of appeal.
24. That said, should the court shut the applicant out from pursuing his appeal? In my view, and considering that the suit was undefended, locking out the applicant may be very drastic.
25. With regard to whether the intended appeal is arguable, I am alive to the fact that in deciding an application of this nature, the court must be careful not to delve into the merits of the case at this stage. The court should therefore only be concerned with the question of whether or not the appeal, on the face of it, raises triable issues and whether it will be rendered nugatory if the application is not allowed, should the decision of the appellate court overturn that of the trial court.
26. A cursory look at the draft Memorandum of Appeal shows that the same is based on the finding that the applicant was duly served with the court summons and that he neglected to enter appearance or file defence. Service of the summons was disputed by the applicant when he moved the lower court with the application that was dismissed. I am of the view that the grounds raised therein are triable and/or arguable.
27. The other limb is whether the Respondent can be adequately compensated in costs for any prejudice that may be suffered as a result of the exercise of discretion in favour of the Applicant. The answer, in my, is in the affirmative. I find that no prejudice will be caused to the Respondent that cannot be compensated by an award of costs if the Application is allowed.
28. Considering that extension of time is an equitable remedy, I hold that the Applicant should not be denied a seat in the altar of justice.
29. With respect to the question of stay of execution, Order 42 Rule 6(2) of the Civil Procedure Rules provides:
 - “(2) No order for stay of execution shall be made under sub rule (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.”
30. In the instant case the Applicant claims that he will suffer irreparable loss should execution proceedings commence against him as his intended appeal will be rendered nugatory.
31. The record shows that while the applicant has not expressly offered any particular security, he has averred that he is ready to abide by any terms set by the court. In my view that averment is sufficient



to meet the requirement under Order 42 Rule 6 of the Civil Procedure Rules. It is up to the court to determine the appropriate security to be given by the applicant. I will give orders on this shortly.

32. As to whether this Application has been filed without unreasonable delay, I have already noted the Applicant did not satisfactorily explain the delay of 3 months in filing this application, but as I have stated, I'm willing to accommodate the applicant so as to ventilate his intended appeal.

33. In conclusion, the following orders do issue;

- i. There shall be stay of the execution of the decree of the lower court pending the filing and determination of the intended appeal but on condition that the applicant deposits half of the decretal sum, less costs, in a joint interest earning account in the name of the advocates acting for the parties within thirty (30) days from the date hereof.
- ii. The applicant is granted to file the appeal out of time. The memorandum of appeal to be filed and served within fourteen (14) days from the date hereof.
- iii. In default of (i) and (ii) above, the leave and the stay granted shall be deemed to have lapsed automatically without further reference to the court.
- iv. Costs of this application shall be borne by the applicant.

DATED, SIGNED AND DELIVERED AT MERU THIS 22ND DAY OF JANUARY, 2026.

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H. M. NYAGA

JUDGE

