



**Sirgoi Holdings Limited & another v Sitienei (Civil Application  
E188 of 2025) [2026] KECA 160 (KLR) (30 January 2026) (Ruling)**

Neutral citation: [2026] KECA 160 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT KISUMU  
CIVIL APPLICATION E188 OF 2025  
HA OMONDI, JA  
JANUARY 30, 2026**

**BETWEEN**

**SIRGOI HOLDINGS LIMITED ..... 1<sup>ST</sup> APPLICANT**

**THE BOARD OF DIRECTORS SIRGOI HOLDINGS LIMITED 2<sup>ND</sup> APPLICANT**

**AND**

**HOSEA SITIENEI ..... RESPONDENT**

*(Being an application for extension of time to file and serve the record of appeal out of time; and stay of execution from the judgment of the Employment and Labour Relations Court at Kisumu (Baari, J.) dated 5th October 2023 in Cause No. 26 of 2019)*

**RULING**

1. In the Notice of Motion dated 22<sup>nd</sup> July 2025, Sirgoi Holdings Limited and The Board of Directors, Sirgoi Holdings Limited, being the 1<sup>st</sup> and 2<sup>nd</sup> applicants respectively, seek an order for extension of time to file and serve the Record of Appeal; to deem the Record of Appeal as duly filed and served; The applicants also pray for orders of stay of execution of the decree pending the hearing and determination of the appeal, from the judgment delivered on 5<sup>th</sup> October 2023 in ELRC Cause No. 26 of 2019 by Baari, J. The application is anchored on Articles 48, 50(1), 159(2) (d) of *the Constitution*, Sections 1A, 1B, 3A of the *Civil Procedure Act*, Rule 4 of 5(2)(b), 31, 41, 42, 43, 47, 55 and 56 of the Court of Appeal Rules, 2022, and section 9 of the *Civil Procedure Act*. The application is supported by the affidavit and further affidavit sworn by Eng. Elnathan Chumo, a director of Sirgoi Holdings of the 1<sup>st</sup> applicant.
2. The applicants explain that the failure to file and serve the record of appeal was due to the fact that the counsel on record was occasionally unavailable as she was serving as a caretaker for a parent battling a terminal illness; that counsel had prepared a memorandum of appeal in May 2024, as the appeal has good chances of success; that the upon appearing in court for prosecution of the application for stay pending appeal the Court indicated that the proceedings were already in the file; that counsel



requested for proceedings and submissions, which were sent via email on 7<sup>th</sup> November 2024 however, the proceedings were certified on 26<sup>th</sup> October 2023 thus necessitating this application.

3. The applicants also crave for orders of stay pending appeal for reasons inter-alia that: they have a meritorious appeal; the respondent is unlikely to be able to refund the amount if collected/paid considering that there are no known substantive assets to cover the claim; and the deceit with which he contracted with the applicants. Further, that appeal will most likely become nugatory if the stay is not granted and the applicants being an eminent business enterprise worth over Kshs.750, 0000.00 constitutes a good security for the decretal sum; and are otherwise agreeable to any other or further orders on security the court may prescribe.
4. The judgment is challenged by appeal and the applicant points out bona fide steps which constitute a genuine desire to pursue the appeal, to wit (i) Notice of Appeal and (ii) Request for judgment filed and served on time. It is the applicant's contention that the reason for delay is substantial, afford an excuse for the delay, and deserve the exercise of the Court's discretion to extend time. It is reiterated that extension of time to file and serve the record of appeal will not be prejudicial to the Respondent; and in any event, the delay has not been inordinate, nor unreasonable.
5. In a replying affidavit sworn by Hosea Sitienei, the application is opposed and described as a non-starter, lacks merit, frivolous, vexatious, bad in law, fatally defective, incompetent, abuse of due process of court thus incapable of obtaining the orders sought and ought to fail; that the Applicants have inexcusably failed to adequately explain the reasons for the delay in filing and serving the Record of Appeal thus the application for extension of time is unmerited. It is pointed out that the Court (differently constituted), had by the ruling delivered on 11<sup>th</sup> July, 2025, struck out the applicants application dated 4<sup>th</sup> December, 2024 for being incompetent and directed that they had an option to file a fresh competent application if they so desired, but from their conduct, it would appear that the applicants are not keen and desirous of justly prosecuting their application considering the indolence demonstrated on their part, as they had 24 Hours to serve the application but it is now over 216 hours or 9 days later; that the substantial lapse of time, over one year and eight months, demonstrates a lack of urgency and genuine desire on the part of the applicants who are acting out of bad faith and taste.
6. The respondent further submits that the present application is still incompetent as is, it is an omnibus application which is incapable of proper adjudication by the Court, because each of the reliefs sought are not only governed by different rules but also subject to long established and different judicial principles, which go to the jurisdiction of the court or its lack thereof, as such, the application is incurably defective and ought to be struck out in the first instance; that in any event, there is no appeal filed that would warrant the grant of the orders sought as none has ever been filed and served upon the Respondent within the stipulated time frame as required under the Court of Appeal Rules, 2022. The respondent urges for dismissal of the application with costs,
7. It must be pointed out from the onset that the applicant herein has brought an omnibus application as she seeks two prayers, one of which cannot be granted by the Court sitting as a single Judge. In the present application, the prayer for an order of stay of execution of the judgment and decree of the trial court, cannot be granted by a single Judge of the Court; and can only be granted by a full bench of this Court as provided by rule 55 of the Court of Appeal Rules which states that:
  - “(1) Such application, other than an application specified in sub rule (2), shall be heard by a signal Judge. Provided that such application may be adjourned by the Judge for determination by the Court.
  - (2) The rule shall not apply to-



- (a). ...
- (b) an application for stay of execution, injunctions or stay of further proceedings.
- (c). ”

8. Ultimately, this Court does not have jurisdiction to consider the prayer sought for stay orders. This Court will therefore not render a decision in respect of the same despite the spirited submissions made by both parties. The applicant shall be at liberty to list that prayer for determination by the full bench of the Court.

9. As regards the prayer for extension of time within which to serve the record of appeal, this Court has unfettered discretion under Rule 4 of the Court of Appeal Rules to extend time for any step intended to be done within the period stipulated by the Rules as was pointed out in Paul Wanjohi Mathane vs. Duncan Gichare Mathenge [2013] eKLR, where this Court held thus:

“The discretion under Rule 4 is unfettered, but it has to be exercised judiciously, not on whim, sympathy or caprice. I take note that in exercising my discretion I ought to be guided by consideration of the factors stated in previous decisions of this Court including, but not limited to, the period of delay, the reasons for the delay, the degree of prejudice to the respondent and interested parties if the application is granted, and whether the matter raises issues of public importance.”

10. In the present application, the applicants have given the reason for the delay in lodging the appeal in time. The court confirms from the annexures to the further affidavit that a valid Notice of Appeal was filed on 9<sup>th</sup> October 2023, within time; proceedings were certified on 26<sup>th</sup> October 2023 but only emailed on 7<sup>th</sup> November 2024, as demonstrated by the email from the judiciary; coupled with the fact that Counsel was intermittently unavailable due to caregiving duties for a terminally ill parent, a fact not disputed by the respondent. Indeed, a memorandum of appeal was prepared as early as May 2024 and the applicants filed the application immediately upon receiving the proceedings.

11. The applicants took prompt and diligent steps to initiate the appeal process by filing a Notice of Appeal on 9<sup>th</sup> October 2023, within the time prescribed by the law, following the judgment; and the delay in filing the record of appeal arose due to the unavailability of typed and certified. The applicants made efforts to obtain the proceedings and Proceedings applied for immediately. The applicant filed this application within seven

(7) days of discovering that they were out of time. The applicants were vigilant and diligent. They have sufficiently earned a favourable exercise of this Court's exercise of discretion in extending the time for lodging and serving the Record.

12. The applicants are granted extension of time to lodge and serve the notice of appeal. The same shall be filed and served within fourteen (14) days of today's date. Costs shall be in the cause.

**DATED AND DELIVERED AT KISUMU THIS 30<sup>TH</sup> DAY OF JANUARY 2026.**

**H. A. OMONDI**

..... **JUDGE OF APPEAL**

I certify that this is a true copy of the original.

Signed



**DEPUTY REGISTRAR**

