



REPUBLIC OF KENYA



KENYA LAW
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**Muraya v Magua (Commercial Miscellaneous Application E319 of 2024)
[2026] KEHC 568 (KLR) (Commercial and Tax) (23 January 2026) (Ruling)**

Neutral citation: [2026] KEHC 568 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL MISCELLANEOUS APPLICATION E319 OF 2024
NZIOKI WA MAKAU, J
JANUARY 23, 2026**

BETWEEN

PETER MATHAI MURAYA APPLICANT

AND

JOHN NG'ANG'A MAGUA RESPONDENT

RULING

1. Before me is a Notice of Motion application dated 15th April 2024 filed by the applicant/judgment debtor pursuant to the provisions of Article 159 of *the Constitution* of Kenya, Orders 22, 40 & 42 Rule 6 of the Civil Procedure Rules, 2010, Sections 79G & 3A of the *Civil Procedure Act* and all enabling provisions of the law. The applicant seeks an order for stay of execution of the decree and consequential orders issued on 5th August 2022, restraining the respondent, his agents or Auctioneers from arresting the applicant or taking any steps towards execution pending the hearing and determination of the intended Appeal. The applicant also seeks an order for leave to file an Appeal against the Judgment and decree of 5th August 2022 out of time.
2. The application is premised on the grounds on the face of the Motion, and it is supported by an affidavit sworn on the same day by Mr. Peter Mathai Muraya, the applicant herein. Mr. Muraya averred that the respondent sought to recover Kshs.450,000/= from him under a purported contract dated 21st April 2021, as reflected in an amended statement of claim filed on 5th July 2022. That he engaged the law firm of Mwangi Nduati & Co. Advocates to respond to the claim, but the matter proceeded ex parte without his participation, resulting in a Judgment entered on 5th August 2022 in favour of the respondent.
3. Mr. Muraya contended that his former Advocates failed to update him on the proceedings and he only became aware of the Judgment when a Court Bailiff served him with a warrant of arrest on 22nd March 2024, prompting him to change Advocates. He contended that had he testified before the Trial Court,



the outcome would have been different, thus he intends to appeal against the Trial Court's Judgment. Mr. Muraya averred that he has an arguable appeal evidenced by the draft Memorandum of Appeal attached to his affidavit in support of the application herein.

4. In opposition to the application herein, the respondent filed grounds of opposition and a Notice of Preliminary Objection dated 30th April 2024, raising the following grounds –
 - i. That the said Notice of Motion amounts to an abuse of the Court process;
 - ii. That the Honourable Court is not seized of jurisdiction to hear the said Motion on account of the fact that there is no pending Appeal, with the period of limitation in filing an Appeal having lapsed;
 - iii. That the subject matter leading to this application, that is the claim against the applicant, was concluded way back on 5th August 2022 when the Subordinate Court pronounced itself on the matter by delivering Judgment in favour of the respondent;
 - iv. That the entire money decree amounting to Kshs.556,487.00 is under execution and the applicant is avoiding arrest by virtue of a warrant of his personal arrest and detention to civil jail being in force (sic); and
 - v. That the judgment debtor/applicant has withheld material information from the Honourable Court the decree amounting to Kshs. 556,487.00 together with accrued interest to date is due and payable and therefore, under an obligation to deposit the said into Court before, he can be given audience (sic).
5. The application herein was canvassed by way of written submissions. Although from the record there is no evidence of filing of written submissions and/or making of any oral submissions by the applicant, the respondent's submissions were filed by the law firm of Maosa & Company Advocates on 24th March 2025.
6. Mr. Maosa, learned Counsel for the respondent submitted that the applicant has failed to comply with Court Orders requiring him to deposit the decretal sum, and no Appeal is currently pending from the Small Claims Court decision. He stated that given the failure by the applicant to comply with this Court's directions, the application herein is a misuse of the Court process and it ought to be dismissed with costs.

ANALYSIS AND DETERMINATION.

7. I have considered the application herein, the grounds on the face of it and the affidavit filed in support thereof. I have also considered the grounds of opposition, the Preliminary Objection and the written submissions filed by the respondent. The issues that arise for determination are -
 - i. Whether the applicant should be granted leave to appeal against the Judgment and decree of the Small Claims Court delivered on 5th August 2022; and
 - ii. Whether the applicant has made out a case to warrant being granted of an order for stay of execution.



Whether the applicant should be granted leave to appeal against the Judgment and decree of the Small Claims Court delivered on 5th August 2022.

8. This Court has the discretion to extend time within which a dissatisfied party can lodge an appeal against the decision of a Subordinate Court pursuant to the provisions of Section 79G of the Civil Procedure Act, which states 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.

9. The Supreme Court in the case of *Gitonga & 3 others v Independent Electoral & Boundaries Commission & 17 others* [2018] KESC 39 (KLR) set out the guiding principles when it comes to extension of time. These were the conditions which were also expressed in the *Nick Salat* case as follows –

This being the first case in which this Court is called upon to consider the principles for extension of time, we derive the following as the underlying principles that a Court should consider in exercise of such discretion:

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 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. where there is a reasonable cause 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.”

10. The power of this Court to enlarge time for filing an appeal is discretionary and is exercised based on established principles, including the length of delay, the reason for the delay, the arguability of the intended appeal, and the degree of prejudice to be suffered by the respondent if the orders sought are granted.

11. Further, the Court of Appeal in the case of *Andrew Kiplagat Chemaringo v Paul Kipkorir Kibet* [2018] KECA 701 (KLR) in dealing with a similar application held as follows–

The law does not set out any minimum or maximum period of delay. All it states is that any delay should be satisfactorily explained. A plausible and satisfactory explanation for delay is



the key that unlocks the court's flow of discretionary favour. There has to be valid and clear reasons, upon which discretion can be favourably exercisable. (Emphasis added).

12. The Judgment which the applicant seeks leave to appeal against, was delivered on 5th August 2022. The applicant contended that he was unaware of the Judgment, the decree, and the ensuing execution proceedings until 22nd March 2024, when he was served with a warrant of arrest by a Court Bailiff, prompting the filing of the instant application. While the applicant attributes this lack of knowledge to the failure by his former Advocates to inform him of the outcome of the matter, he has however neither alleged nor demonstrated any steps taken on his part to follow up on the progress of his case. It must be emphasized that a suit belongs to a litigant and not to Counsel, and the applicant was therefore under a duty to show the efforts he made to monitor or pursue his matter, a duty which he has failed to discharge.
13. Additionally, even assuming that the applicant only became aware of the impugned Judgment and decree on 22nd March 2024, the application herein was not filed until 15th April 2024, a period of approximately twenty-four (24) days thereafter. Upon perusal of the affidavit in support of the instant application, the applicant has offered no explanation whatsoever for the delay in instructing Counsel and lodging the application herein. In this regard, this Court is guided by, and concurs with the holding in the case of *Jaber Mohsen Ali & another v Priscillah Boit & another* [2014] KEELC 132 (KLR) that -

The question that arises is whether the application has been filed after unreasonable delay. What is unreasonable delay is dependent on the surrounding circumstances of each case. Even one day after judgment could be unreasonable delay depending on the judgment of the court and any order given thereafter.
14. In the circumstances of this matter, this Court finds that there has been inordinate delay in filing the application herein, which delay has not been satisfactorily explained, to warrant this Court to exercise its discretion in favour of the applicant.
15. The Supreme Court in the case of *Gitonga & 3 others v Independent Electoral & Boundaries Commission & 17 others* (supra), held that 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. This Court is cognizant of the fact that in as much as the applicant has a constitutionally underpinned right of appeal, the respondent has a decision in his favour and he also has the right to enjoy the fruits of his Judgment.
16. Having failed to satisfactorily explain the delay in filing the instant application, this Court finds that the delay in this case is not only inordinate but also inexcusable. For this reason, this Court is satisfied that the applicant is guilty of laches and is therefore undeserving of the exercise of this Court's discretion in his favour.

Whether the applicant has made out a case to warrant being granted of an order for stay of execution.

17. In view of the finding that the application for leave to appeal out of time is devoid of merits, this Court finds it unnecessary to consider the prayer for stay pending Appeal. Court orders are not issued in vain, and in the absence of a pending Appeal, there is no basis upon which the Court can interrogate the merits or demerits of the request for stay of execution.
18. The applicant's application dated 15th April 2024 is bereft of merits. It is hereby dismissed with costs to the respondent.

It is so ordered.



**DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 23RD DAY OF JANUARY 2026.
RULING DELIVERED THROUGH MICROSOFT TEAMS ONLINE PLATFORM.**

NJOKI MWANGI

JUDGE

In the presence of;-

Mr. Ajulu h/b for Mr. Kuria for the judgment debtor/applicant

Mr. Maasa for the decree holder/respondent

Ms B. Wakabi – Court Assistant.

