

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT THIKA
CIVIL APPEAL NO. E305 OF 2025

WILLIAM MUTHAMI.....
APPLICANT

VERSUS

STELLAH NJERU.....
.....RESPONDENT

R U L I N G

Brief facts

1. The application dated 24th November 2025 seeks for orders of leave to file an appeal out of time against the rulings delivered on 28th August 2025 and 28th October 2025 in Thika Small Claims Court SCCCOMM No. E1291 of 2024. The applicant further seeks for orders of stay of execution of the said rulings pending the hearing and determination of the appeal.
2. The respondent opposed the application filing her Replying Affidavit sworn on 10th December 2025.

Applicant's Case

3. The applicant states that judgment in the trial court was delivered on 16th November 2023 in favour of the

respondent for Kshs. 59,600/-. The applicant states that he did not dispute the decretal

sum but asked to have the amount liquidated in installments of Kshs. 10,000/- and immediately started remitting the same to the respondent. The trial court then delivered a ruling through the CTS on 28th August 2025 that the applicant should make a payment of Kshs. 30,000/- per month but the decision was never shared with the litigants. The trial court further directed that on 21st October 2025 that the decretal sum be liquidated by monthly installments of Kshs. 30,000/- with effect from 15th September 2025 until payment in full and in default, execution to issue.

4. The applicant avers that the trial court then considered a previously issued Notice to show cause which was scheduled for 28th October 2025 and found that he was in default and held that if he did not pay the entire decretal sum within a month, then warrants of arrest shall be issued against him despite continued payment in installments. The applicant further avers that there is a warrant of arrest about to be issued wherein he will be arrested and committed to civil jail despite efforts to settle the decretal sum. He further states that he has paid a total of Kshs. 50,000/-.
5. The applicant states that the respondent shall not suffer any prejudice if the application is allowed and she continues to be paid the decretal sum.

The Respondent's Case

6. The respondent states that judgment was lawfully entered against the applicant on 15th May 2025 in her favour for a sum of Kshs. 214,701/- plus costs of Kshs. 59,600/- and interest of Kshs.274,301/-

274,301/-. The applicant filed an application in the trial court dated 7th July 2025 proposing to pay a sum of Kshs. 10,000/- per month which would have resulted in the decretal sum being liquidated over a period exceeding two years which was unreasonable and prejudicial to her interests as a creditor. The respondent states that she opposed the applicant's proposal and expressed her willingness to accept monthly installments of not less than Kshs. 30,000/-. On 28th August 2025, the learned adjudicator delivered a ruling where she was satisfied that the applicant had not filed any evidence to allow the court to assess his financial situation. Consequently, the trial court adopted her proposal ordering the applicant to liquidate the decretal sum by way of monthly installments of Kshs. 30,000/- with effect from 15th September 2025 until payment in full. The respondent argues that the said ruling was made pursuant to Rule 27(1)(b) and (2) of the Small Claims Court Rules, which permits the court to hear parties' proposals and in determining the application, consider the debtor's net monthly income, assets and liabilities. The applicant's failure to provide the crucial evidence justified the court's decision to adopt her proposal.

7. The respondent states that the applicant has paid a total of Kshs. 40,000/- and not Kshs. 50,000/- as alleged. The respondent further states that the applicant has been paying at his own proposed rate of Kshs. 10,000/- per month deliberately ignoring the court order dated 21st October 2025 which directed him to pay Kshs. 30,000/-.

Thus, the applicant ought to have paid Kshs. 90,000/- but he has only paid Kshs. 40,000/-, therefore the outstanding balance on the decretal sum is Kshs. 234,301/-.

8. The respondent states that the applicant's conduct portrays lack of good faith, dishonesty and a deliberate attempt to mislead this Honourable Court and frustrate the execution of the decree.

9. The respondent states that the decision of 28th August 2025 was delivered via CTS, in the presence of both parties and was accessible to all parties. Further, formal orders were extracted and served upon the applicant's advocates on 21st October 2025 and further it was the applicant's duty to follow up on his own urgent application.

10. The respondent states that the applicant has not demonstrated any irreparable loss that cannot be compensated by an award of damages. The risk of committal to civil jail is a direct result of his default in complying with the court order of Kshs. 30,000/- per month and subsequent directions. The respondent further states that she stands to be prejudiced as she continues

to suffer due delay in receiving the lawfully awarded sum. The applicant's payment of Kshs. 10,000/- per month after the court ordered Kshs. 30,000/- is an act of defiance of a lawful court order.

11. The respondent argues that the applicant has not provided any sufficient grounds or an explanation for the delay in filing his appeal against the rulings of 28th August 2025 and 28th October

2025. He only laments the result of the directions not the reasons for the delay in filing the appeal itself.

12. The respondent states that the applicant has not approached the court with clean hands as he has given false and misleading allegations of making continued payments yet he has not done so.

The Law

Whether the court should exercise its discretion to grant the applicant leave to file his appeal out of time;

13. **Section 79G of the Civil Procedure Act** states:-

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 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.

14. It is clear from the wording of section 79G of the Civil Procedure Act that before the court considers extension of time, the applicant must satisfy the court that that he has good and sufficient cause for filing the appeal out of time. This principle was enunciated in the case of **Diplack Kenya Limited vs William Muthama Kitonyi [2018]eKLR** an applicant seeking enlargement of time to file an

appeal or admission of an already filed appeal must show that he has a good cause for doing so.

15. The Supreme Court in the case of **Nicholas Kiptoo Korir arap Salat vs IEBC and 7 Others [2014] eKLR** enunciated the principles applicable in an application for leave to appeal out of time. The court stated inter alia that:-

“The underlying principles a court should consider in exercise of such discretion should include:-

a) Extension of time is not a right of any 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 by 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 respondent if the extension is granted;**
- f) Whether the application has been brought without undue delay.**

16. Similarly in the case of **Paul Musili Wambua vs Attorney General & 2 Others [2015]eKLR**, the Court of Appeal in considering an application for extension of time and leave to file the Notice of Appeal out of time stated the following:-

“.....it is now settled by a long line of authorities by this court that the decision of whether or not to extend the time for filing an appeal the Judge exercises unfettered discretion. However, in the exercise of such discretion, the court must act upon reason(s) not based on whim or caprice. In general

the matters which a court takes into account in deciding whether or not to grant an extension of time are; the length of delay, the reason for the delay, the chances of the appeal succeeding if the application is granted, the degree of prejudice to the respondent if the application is granted.”

17. It is important to note that the impugned rulings were delivered on 28th August 2025 and 21st October 2025 and the applicant filed the current application on 26th November 2025. This is about 2 months and seven days respectively outside the time limited for filing an appeal. The applicant has not really given any reasons for delay but as for the ruling delivered on 28th August 2025, he states that the trial court made a determination without the parties being present and the ruling was not shared. On perusal of the record, the applicant filed an application dated 7th July 2025 under certificate of urgency seeking to liquidate the decretal sum by way of monthly installments of Kshs. 10,000/-. The trial court delivered its ruling

on 28th August 2025 vide the CTS. From the record, it is clear that both parties were present when the ruling was delivered. The respondent stated in her affidavit that her counsel extracted the orders and served them upon the applicant's advocates. That notwithstanding, the said application was filed by the applicant in person. As such, the applicant had the responsibility to follow up on his application to track its progress. Furthermore, the

respondent's counsel managed to log into the CTS and accessed the said ruling and served it on the applicant's advocates. It does not make sense that the applicant could file an application under certificate of urgency and wait for over two months before following up on it. Thus, the reasons for delay given by the applicant are not plausible to warrant the discretion in their favour. Although the delay of two months and seven days respectively may not be inordinate, the reasons for delay are not plausible in my view.

18. The applicant has attached the intended Memorandum of Appeal which I have perused. Without delving into the merits of the appeal, the grounds raised are not arguable in that the respondent is entitled to enjoy her judgment which is her legal right.

19. As such, I find that the applicant has not established to the satisfaction of the court that time should be enlarged to enable him file his appeal. In the circumstances, the applicant having failed to demonstrate that he should be granted leave to appeal out of time does not except this application to be successful. The lower court

gave directions on 27th November 2025 that the applicant deposit the decretal sum in court within twenty one days and in default, the stay orders would stand vacated. The matter came up for directions on 17th December 2025 and the applicant had not complied. For those reasons, the

orders for interim stay were automatically vacated thus rendering this application moot.

20. I find no merit in this application and I hereby dismiss it with costs to the respondent.

21. Accordingly, the application dated 24th November 2025 lacks merit and is hereby dismissed with costs to the respondent.

22. It is hereby so ordered.

***RULING DELIVERED VIRTUALLY, DATED AND SIGNED
AT THIKA THIS 22ND DAY OF JANUARY 2026.***

**F. MUCHEMI
JUDGE**