



**Muraguri v Kirika (Miscellaneous Civil Application E132 of 2025)
[2026] KEHC 459 (KLR) (22 January 2026) (Ruling)**

Neutral citation: [2026] KEHC 459 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT THIKA
MISCELLANEOUS CIVIL APPLICATION E132 OF 2025
FN MUCHEMI, J
JANUARY 22, 2026**

BETWEEN

NANCY NYAMBURA MURAGURI APPLICANT

AND

JANE WANJIKU KIRIKA RESPONDENT

RULING

Brief facts

1. The application dated 21st July 2025 seeks for orders of leave to file an appeal out of time against the judgment in Gatundu CM Civil suit No. E142 of 2023 delivered on 13th May 2025. The applicant further seeks for orders of stay of execution of the said judgment pending the hearing and determination of the appeal.
2. The respondent opposed the application and filed Grounds of Opposition dated 8th December 2025.

Applicant's Case

3. The applicant states that judgment in the lower court was delivered in the presence of both parties' advocates on 13th May 2025. Being aggrieved by the said judgment, the applicant says he instructed her advocates to file an appeal. However, time to lodge the appeal had already lapsed by then. The applicant states that the delay was inadvertently caused by the time taken considering the legal advice from her advocates as well as consulting and obtaining administrative approvals within their office on whether to settle the decree or to proceed on appeal.
4. The applicant avers that there are no temporary orders of stay in place and thus they are apprehensive that the respondent may initiate execution process to recover the decretal sum. If the orders of stay are not granted and the execution process commences, the appeal shall be rendered nugatory.



5. The applicant states that substantial loss may result unless the orders for stay of execution is argued. It is further deposed that the appeal raises arguable points of law and as such, orders for stay ought to be issued. The applicant further states that they are ready and willing to deposit the entire decretal sum in a joint interest earning account as security for costs of the appeal.

The Respondent's Case

6. The respondent states that pursuant to Section 79G of the *Civil Procedure Act*, the applicant has not shown good and sufficient cause for not filing the appeal in time but shifts the blame to the insurer who was taking time to consider the judgment. Further, the applicant was not precluded from filing the Memorandum of Appeal within thirty days of the judgment and thereafter prepare the Record of Appeal.
7. The respondent states that the applicant has failed to establish irreparable damage which will be meted upon her when the decretal sum is paid to the respondent. The respondent further states that she is opposed to the applicant's proposal for deposit of security equivalent to the decretal sum. In the event the court shall consider the applicant's application for stay, the respondent argues that the court ought to direct the applicant to pay her half the decretal sum and the balance to be deposited in a joint interest earning account as may be agreed upon by the parties.
8. Parties put in written submissions.

The Applicant's Submissions

9. The applicant submits that judgment was delivered on 13th May 2025 and the instant application was filed on 21st July 2025 which is one month after the delivery of the judgment. Thus, there is no inaction or unreasonable delay demonstrated as alluded by the respondent.
10. The applicant relies on the cases of *James Wangalwa & Another vs Agnes Naliaka Cheseto* [2012] eKLR and *Richard Muthusi vs Patrick Gituma Ngomo & another* [2017] eKLR and submits that she has an arguable appeal and no delay was occasioned either by the appeal or the application for stay. Thus the court ought to grant the stay orders to allow parties an opportunity to have the appeal determined meritoriously.
11. The applicant argues that since the respondent has neither an executable decree or an order made in the execution of the said decree, the issue of deposit of security does not apply. The applicant further submits that the court should balance whether an order for paying half of the decretal sum to the respondent would be fair in the circumstances noting that the respondent has not placed before the court any evidence of an affidavit to show that she would refund back the Kshs. 400,000/- plus costs if the appeal succeeds. To support her contentions, the applicant refers to the case of Civil Appeal No. 144 of 2018; *Kapa Oil Refineries Limited vs Festus Mutuku Muinde* (2018) eKLR.

The Respondent's Submissions

12. The respondent refers to the case of *Amal Hauliers Limited vs Abdulnasir Abubakar Hassan* [2017] eKLR and submits that her proposal to get half the decretal sum is reasonable as she needs money for treatment.



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. Bearing in mind the principles in the foregoing cases, it is noted that the judgment was delivered on 13th May 2025. The applicant then filed the current application on 21st July 2025 which was about one month outside the time limited for filing an appeal. The applicant has attributed the delay in filing her appeal to her insurer who took time to consider the legal opinions by their advocates, consulting, and obtaining administrative approvals within the office on whether an appeal should be lodged.
18. On perusal of the trial court record, judgment was delivered in the presence of the respondent’s advocates and the trial court granted thirty (30) days stay pending further action by the parties. The applicant has not stated that it received the judgment late but states that her insured delayed in giving the instructions to appeal. It is my considered view that the reasons given by the applicant are not plausible to warrant exercise of this court’s discretion in her favour. The applicant had thirty days to peruse the judgment and proceed to file an appeal which time was more than sufficient for her to file an appeal. Although the delay of one month may not be inordinate, the reasons for delay are not plausible.
19. The applicant has attached the intended Memorandum of Appeal and without delving into its merits the grounds raised are not in my view arguable. The applicant has not established to the satisfaction of the court that time should be enlarged to enable her file her appeal in that no reasonable reason has been advanced for the delay. If time is extended, the respondent is likely to have the enjoyment of his rights delayed further.
20. Consequently, I find this application not merited and I hereby dismiss it with costs to the respondent.
21. It is hereby so ordered.

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

F. MUCHEMI

JUDGE

