



REPUBLIC OF KENYA



**Njoroge v Wambua & another (Miscellaneous Appeal E048 of 2025)  
[2026] KEHC 643 (KLR) (Civ) (29 January 2026) (Ruling)**

Neutral citation: [2026] KEHC 643 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CIVIL**

**MISCELLANEOUS APPEAL E048 OF 2025**

**AC MRIMA, J**

**JANUARY 29, 2026**

**BETWEEN**

**ISAAC MBUGUA NJOROGE ..... APPLICANT**

**AND**

**STEPHEN MUMO WAMBUA ..... 1<sup>ST</sup> RESPONDENT**

**SAMUEL OMEGA OWINO ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. This is a composite ruling on two applications by way of Notices of Motion dated 28<sup>th</sup> May 2025 and 26<sup>th</sup> June 2025 respectively. The Notice of Motion dated 28<sup>th</sup> May 2025 sought for enlargement of time to file an intended appeal and stay of execution of the judgment and decree of the trial Court in MCCC No. E3358 of 2023 while the Notice of Motion dated 26<sup>th</sup> June 2025 sought for orders that this Court do vary/set aside or clarify the orders of this Court dated 3<sup>rd</sup> June 2025. The applications were supported by the grounds on the face thereof and the supporting affidavits of Isaac Njoroge Mbugua and Kinoti Mutugi respectively sworn on even dates.
2. Pursuant to the directions of this Court, the two applications were heard together, with the Notice of Motion dated 26<sup>th</sup> June 2025 being deemed as a response to the Notice of Motion dated 28<sup>th</sup> May 2025.
3. Consequently, and for good order, this Court shall ascertain whether to enlarge time and, further if so, whether to review, set aside, vary/and or clarify its of 3<sup>rd</sup> June 2025 specifically the condition requiring the Applicant to deposit Kshs. 3,000,000/= as security for grant of stay of execution pending appeal.
4. On the enlargement of time, the Applicant averred that the delay in filing the appeal was caused by a mishap in communication between himself and his insurer and the firm of Advocates that were on record then. He contended that though there was delay in filing the intended appeal, the



same is not inordinate. Further, he argued that the intended appeal is arguable with high chances of success and the instant application was brought without undue delay. On the issue of the deposit, the Applicant averred that his insurer had already made a partial payment of the decree in the sums of Kshs. 3,000,000/= out of the decretal sums of Kshs. 7,004,634.54/= and there was therefore the need for this Court to clarify its orders issued on 3<sup>rd</sup> June 2025 requiring the Applicant to deposit the sum of Kshs. 3,000,000/= to the Respondent's Counsel.

5. The Respondents strenuously opposed to the two applications. They filed Grounds of Opposition and Replying Affidavit both both dated 3<sup>rd</sup> July 2025. The Respondents averred that the Applicant had not met the threshold for grant of extension of time to file an appeal and that the miscommunication between the Applicant, his insurer and the Advocates at the time cannot be used as the basis to shift responsibility for failure to file the appeal within time. Further, the Respondents argued that it would be futile to extend the time to file the appeal when the Applicant's insurer has already paid part of the decretal sums as this would amount to approbating and reprobating.
6. On the review issue, the Respondents contended that it was an attempt by the Applicant to appeal against the order of this Court in the guise of a review and was therefore an abuse of the Court process. They contended that the subject of the stay was not against the decretal sum of Kshs. 7,004,634.45/= but against the balance of Kshs. 4,004,634.45/= since the sum of Kshs. 3,000,000/= had already been paid by the Applicant's insurer. They averred that the application was without merit as it had not met the threshold under Order 45 Rule 2 of the Civil Procedure Rules. They further emphasized that the Applicant approached this Court with unclean hands for failing to comply with the orders of this Court. In the end, they urged this Court to dismiss the application with costs.
7. Pursuant to the directions of this Court, the applications were canvassed by way of written submissions. The Applicant's written submissions were dated 23<sup>rd</sup> July 2025. The Applicant submitted that this Court allows him to provide an additional Kshs. 500,000/= as security for the intended appeal noting that his insurer had already made a deposit of Kshs. 3,000,000/=.
8. The Respondent's written submissions were dated 25<sup>th</sup> July 2025. They reiterated that the Applicant did not provide any sufficient explanation for his failure to file the appeal within time and further that the Applicant failed to demonstrate that the intended appeal is arguable. On the issue of the proposal by the Applicant to deposit a further sum of Kshs.500,000/=: the Respondents were vehemently opposed terming it as unreasonably low as compared to Kshs.4,004,636.54/= and further that the quest that the sums of Kshs.3,000,000/= paid by his insurer be deemed as security was untenable. They reiterated that the sums subject of execution are Kshs. 4,004,636.54/= and not the entire decretal sums. In conclusion, they urged this Court to dismiss the applications with costs.
9. The Court will now return to the two issues highlighted above. On the issue of extension of time, the Supreme Court of Kenya in *Nicholas Kiptoo Korir arap Salat vs IEBC & 7 Others* (2014) eKLR, enunciated the principles applicable as follows: -

... 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.
10. Additionally, the Court of Appeal in *Paul Musili Wambua vs Attorney General & Others* (2015) eKLR said as follows in considering an application for extension of time and leave to file a Notice of Appeal out of time :-
- ...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.
11. The judgment was delivered on 4<sup>th</sup> April 2024 and the application for extension of time filed on 28<sup>th</sup> May 2025. There is indeed delay in filing the intended appeal but the same is not inordinate and therefore inexcusable. Further, the Applicant cited a miscommunication between himself, his insurer and his Advocates that resulted to the delay in filing the intended appeal. This kind of breakdown when an issue is dealt with by several parties can reasonably occur. The Court, therefore, finds the reason for the delay plausible.
12. On the issue of security, it is readily admitted that the Applicant's insurance paid the sum of Kshs. 3,000,000/= to the Respondents. However, the Applicant is still amenable to pay an additional Kshs. 500,000/=. This Court finds the proposal quite reasonable taking note of the entire judgment sum. In sum, this is a perfect case where the Applicant ought to be accorded an opportunity to pursue an appeal.
13. Having said so, the following final orders of this Court hereby issue: -
- (a) The Applicant shall file and serve a Memorandum of Appeal in a substantive appeal file within 14 days of this Order.
  - (b) Further to the sum of Kshs. 3,000,000/= [Three Million Only] already paid to the Respondents, the Applicant shall pay a further Kshs. 500,000/= [Five Hundred Thousand Only] to the Respondents within 30 days of this Order and in default execution to issue.
  - (c) Upon satisfaction of [b] above, the stay orders in force in *Milimani MCCC No. E3358 of 2023* shall remain in force pending the hearing and determination of the appeal.
  - (d) There shall be no orders as to costs.
  - (e) This file is hereby marked as closed.
- Orders accordingly.



**DELIVERED, DATED AND SIGNED AT NAIROBI THIS 29<sup>TH</sup> DAY OF JANUARY, 2026.**

**A.C. MRIMA**

**JUDGE**

Ruling virtually delivered in the presence of:

Mr. Kinoti, Learned Counsel for the Applicant.

Michael/Amina – Court Assistants.

