



REPUBLIC OF KENYA



**Njuga Construction Limited v Omasire & another (Miscellaneous Civil Case E014 of 2025) [2026] KEHC 369 (KLR) (22 January 2026) (Ruling)**

Neutral citation: [2026] KEHC 369 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NANYUKI  
MISCELLANEOUS CIVIL CASE E014 OF 2025  
AK NDUNG’U, J  
JANUARY 22, 2026**

**BETWEEN**

**NJUGA CONSTRUCTION LIMITED ..... APPLICANT**

**AND**

**CHARLES OMASIRE ..... 1<sup>ST</sup> RESPONDENT**

**PETER MUTAHI ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. The Applicant in this case, Njuga Construction Limited moved this court by way of a Notice of motion dated 23/7/2025 where it sought the following orders:-
  1. Spent.
  2. That leave be granted to the applicant to file an appeal out of time from Nanyuki Chief Magistrate CMCC No. E217 of 2022.
  3. That there be a stay of execution of the order or decree from the judgement delivered on 4<sup>th</sup> April 2025 and the assessment of tabulate (sic) party and party bill of costs dated 9<sup>th</sup> April 2025 in CMCC No. E217 of 2022 by the Hon. Kithinji A.R pending the hearing of this application interparties.
  4. That there be a stay of execution of the order and decree from the judgement delivered on 4<sup>th</sup> April 2025 in CMCC No. E217 of 2022 pending the filing and the hearing of the Appeal herein against the said judgment.
  5. That costs of this application to abide the outcome of the Appeal.
2. The application is based on grounds as seen on the face thereof and supported by an affidavit sworn by Francis Njuki Gatungo the gist of which is that the Chief Magistrate, Hon. Kithinji A.R. delivered



judgment on 4<sup>th</sup> April 2025 in CMCC No. E217 of 2022 in favour of the Defendants. That the Appellant/Applicant is dissatisfied with the said judgment, decision, order and decree and it has instructed the advocate on record to file an Appeal before this court.

3. It is the Applicant's case that their advocate has lodged a draft Memorandum of Appeal in this Honourable Court and if the assessment of costs and execution proceeds, the Applicant herein will suffer substantial, irreparable loss and damages before the appeal herein is heard and determined and the same will render the appeal nugatory as the Applicant's property may be attached and sold off to recover the same from the Respondent who are people of unknown place of abode and financial means.
4. That on the other hand, the Applicant in the unlikely event, the appeal becomes unsuccessful will be in a position to satisfy the assessed costs before the lower court. Further, that the applicant is willing and ready to furnish reasonable security for the performance of the decree as ordered by this Honourable court.
5. The application is opposed and in a Replying affidavit Mwangi Kariuki the Respondents' advocate depones that the judgment in the suit as disclosed by the Applicant himself was delivered on the 4<sup>th</sup> day of April 2025 more than three months prior to the bringing of this application.
6. That between the date of judgment and the bringing of this application there is nothing on the part of the applicant to show that he was incapacitated as to have been unable to give instructions for the bringing of this application earlier or indeed to have filed the appeal itself within the statutory thirty (30) days of the delivery of the judgment.
7. That indeed as revealed by the Applicant's own Exhibit FNC-4, the last time the applicant may have sought medical attention was on 28<sup>th</sup> August 2024 long even before judgement in the suit was delivered. Further, that there is no basis for staying the assessment of costs.
8. Mr. Mwangi depones that hat contrary to the disposition of the applicant in paragraph 5 of his supporting affidavit, it is self-evident from the judgment itself that the respondent is seized of sufficient means to make restitution to the application in the unlikely event of success of the appeal and in any case such consideration does not arise at this stage.
9. Finally, that the Respondent stands to suffer great prejudice by the granting of this application as it will have been kept out of its dues from a matter which by casual observation appears geared to defeat or delay the ends of justice.
10. I have considered the application, the grounds relied upon and affidavit evidence on record. I have had due regard of the submissions filed. The following issues arise for determination:
  1. Whether the Applicant has demonstrated sufficient cause to warrant extension of time to file an appeal out of time.
  2. Whether the Applicant has satisfied the conditions for grant of stay of execution pending appeal.
  3. What security should issue 4. What orders should issue as to costs.
11. Under Section 79G of the *Civil Procedure Act*, an appeal may be admitted out of time if the appellant satisfies the court that there was good and sufficient cause for the failure to file the appeal in time. The grant of leave is a discretionary remedy which must be exercised judiciously, taking into account, inter alia, the length of the delay, the reason for the delay, the chances of the appeal succeeding (without delving into the merits), and the degree of prejudice to the Respondent.



12. In the present case, the delay is stated to be over 3 months. The explanation given by the Applicant is that he was ill and unable to give instructions to counsel. The evidence provided does not show hospitalization during the post judgement period. I however note from the medical evidence that the Applicant is a cancer patient and I cannot rule out immobilization arising from this affliction.
13. Having considered the explanation offered, the court is satisfied that the delay, though regrettable, has been reasonably explained. The Respondent has not demonstrated that it will suffer prejudice that cannot be compensated by an award of costs if leave is granted.
14. Accordingly, the court is persuaded that sufficient cause has been shown to warrant the exercise of discretion in favour of the Applicant.
15. As relates the prayer for stay of execution, the principles governing stay of execution are set out under Order 42 Rule 6(2) of the Civil Procedure Rules. The Applicant must demonstrate that:
  1. Substantial loss may result unless the order of stay is made;
  2. The application has been made without unreasonable delay; and
  3. Such security as the court orders for the due performance of the decree has been given.
16. On substantial loss, the Applicant contends that execution of the decree will occasion irreparable prejudice and render the intended appeal nugatory.
17. The Respondent counters that by stating that the Respondent would be kept out of the monies by way of damages and costs which would otherwise be available to the Respondent for an uncertain period of time. It is urged that the decree is a monetary one and the Applicant can, in the event of success of his appeal, recover the money.
18. On the material before court, I am satisfied that the threshold for grant of stay of execution has been met, subject to appropriate conditions to protect and secure the Respondent's fruits of judgement.
19. In the result, the court makes the following orders:
  1. Leave is hereby granted to the Applicant to file and serve the intended appeal out of time. The Memorandum of Appeal shall be filed and served within fourteen 30 days from the date hereof.
  2. There shall be a stay of execution of the judgment/decree delivered on 4<sup>th</sup> April 2025 pending the hearing and determination of the intended appeal.
  3. The stay is conditional upon the Applicant depositing security in the sum of Kshs. 230,700 within thirty (30) days from the date hereof. In default, the stay shall automatically lapse.
  4. Costs of the application shall abide the outcome of the appeal.

It is so ordered

**DATED SIGNED AND DELIVERED VIRTUALLY THIS 22<sup>ND</sup> DAY OF JANUARY 2026.**

**A.K. NDUNG'U**

**JUDGE**

