



REPUBLIC OF KENYA



**Wanja v Mwongera (Miscellaneous Civil Application E083 of 2025)
[2026] KEHC 463 (KLR) (26 January 2026) (Ruling)**

Neutral citation: [2026] KEHC 463 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
MISCELLANEOUS CIVIL APPLICATION E083 OF 2025**

**HM NYAGA, J
JANUARY 26, 2026**

BETWEEN

DOLLY WANJA APPLICANT

AND

FELIX KINOTI MWONGERA RESPONDENT

RULING

1. By a notice of motion dated 28th June 2025, the Applicant seeks for orders that: -
 - a. Spent
 - b. That pending the hearing and determination of this application, the Honourable Court be pleased to order a stay of execution the judgement and decree of the Honourable J.M. Njoroge, C.M delivered on 3rd July 2024.
 - c. That pending the hearing and determination of the intended appeal, the Honourable Court be pleased to order a stay of execution the judgement and decree of the Honourable J.M. Njoroge, C.M delivered on 3rd July 2024.
 - d. That this Honourable Court be pleased to grant the Applicant leave to appeal out of time against the ruling of Hon. J.M. Njoroge delivered on 3rd July 2025(sic) Meru Chief Magistrates Court Civil Suit No. E027 of 2023 delivered on 17/12/2024.
 - e. That the costs of this Application do abide by the outcome of the intended appeal.
2. The application is predicated on grounds on its face and supported by the affidavit of the applicant sworn on even date.
3. The applicant states that the respondent filed suit against her in the lower court seeking general and special damages for injuries that he sustained in a road traffic accident on the 6th March 2022. That her



insurance company took up the defence of the case without involving her and that she only came to learn of the suit when she was served with a notice to show cause, sometimes in April 2025.

4. It is her further deposition that she got to learn of the delivery of the judgment in the matter after the time for the appeal had lapsed. That she is aggrieved by the said judgment and that she has good and sufficient cause for failing to file the appeal on time. That the intended appeal has a high chance of success. That the award for pain and suffering and loss of amenities was inordinately high considering the injuries sustained by the respondent. That the award of loss of earnings and special damages was erroneous as they were not strictly proven as required by the law.
5. The applicant further states that there is no inordinate delay in making this application. That the court has to strike a balance between her right to pursue the intended appeal and the right of the respondent to realize the fruits of the judgment in his favor. That the orders are sought in the interest of equity and justice and no prejudice will be suffered by the respondent if the said orders are granted. That she is ready and willing to abide by any terms or conditions that the court may set.
6. In response to the application, the respondent filed a replying affidavit sworn on 16th July 2025.
7. The respondent states that the applicant has not shown sufficient reason why she should be granted leave to file appeal out of time for a judgment that was delivered well over a year before she filed the application. That the application has been overtaken by events since the insurance company has already made part payment of the decretal sum after he filed a declaratory suit against it. That the applicant has refused to pay the balance of the decretal, which has accrued interest.
8. The respondent father states that the applicant was well aware of the judgment of the lower court and that she has been filing numerous applications in the said court. He annexed copies of two rulings delivered by the lower court to buttress this averment.
9. The respondent thus argues that this application is a well-orchestrated move to ensure that this matter is in court for a long time and he continues to suffer without the enjoying the fruits of the judgment.
10. The Application was canvassed through written submissions which I have considered.

Analysis & determination

11. The issues that arise for determination are:-
 - a. Whether the application seeking leave to appeal out of time is merited.
 - b. Whether stay orders sought should be granted.
12. I will address the above issues seriatim.
13. Section 79G of the *Civil Procedure Act* provides 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.”
14. The Supreme Court of Kenya in the case of County Executive of Kisumu vs County Government of Kisumu & others [2017] eKLR, while relying to its decision in the case of Nicholas Kiptoo Arap Korir



Salat vs IEBC & 7 others (2014) eKLR, reiterated the considerations to be made in such a case to be as follows:

- a. 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;
 - 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 to 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 respondents if the extension is granted;
 - f. Whether the application has been brought without undue delay; and
 - g. Whether in certain cases, like election petitions, public interest should be a consideration for extending time.”
15. Therefore, while the court has the discretion to extend time, such discretion must be exercised within the principles of the law and factors set out above. The principles were amplified by the Court of Appeal in the case of Omar Shurie vs Marian Rashe Yafar (2020) eKLR where it was held:
- “It is now well settled that the decision whether or not to extend the time for appealing is essentially discretionary. It is also well settled that in general the matters which this Court takes into account in deciding whether to grant an extension of time are: first the length of the delay, secondly, the reason for the delay; thirdly (possibly) the chances of the appeal succeeding if the application is granted; and, fourthly, the degree of prejudice to the respondent if the application is granted.”
16. It is not disputed that the judgment in the lower court was delivered on 3/7/2024. The applicant therefore ought to have filed his appeal on or before 2/8/2024. That was not done. The reasons given for failure to lodge an appeal within the stipulated time is that the applicant only came to learn of the judgment after it had already been delivered.
17. From the replying affidavit it is clear that the applicant had filed Meru CM’s Civil Suit No. E046 of 2025 in which she sought amongst others, an order of stay of the decree in the primary suit. She filed an application dated 28th February 2025 which was dismissed by the court on 10th June 2025.
18. It is also not in dispute that the applicant had also filed an application dated 9th of April 2025 in the lower court in which she sought to offset the decretal sum awarded by that court in monthly instalments of Ksh. 20,000/- commencing in the month of April 2025. That application was determined by a ruling of the court delivered on 4th June 2025.
19. It is thus clear that the applicant only came to this court after delivery of the latter ruling by the lower court. Contrary to her assertions, she was fully aware of the suit in the lower court and while she filed the applications referred to, she never considered an appeal as an option. That is a clear sign that the applicant was indolent in pursuing her right of appeal.
20. The respondent’s argument that the insurer has paid part of the decretal sum has not been rebutted. Indeed, such payment has been confirmed by the respondent.



21. In my view, this application is a mere attempt to further delay or obstruct the course of justice. A party who genuinely wishes to appeal against any decision ought to move with diligence. The applicant came to this court one year after the judgment was delivered and only after the lower court had delivered the ruling the 28th of June 2025.
22. I am thus of the view that the applicant has not exhibited sufficient reasons to explain the delay in making this application.
23. While the court appreciates that it is very drastic to shut the applicant out from pursuing her appeal, her conduct speaks against her. She participated in the proceedings in the lower court albeit through her insurer.
24. With regard to whether the intended appeal is arguable, I am alive to the fact that in deciding an application of this nature, the court must be careful not to delve into the merits of the case at this stage. The court should therefore only be concerned with the question of whether or not the appeal, on the face of it, raises triable issues and whether it will be rendered nugatory if the application is not allowed, should the decision of the appellate court overturn that of the trial court.
25. A cursory look at the draft Memorandum of Appeal shows that the same is basically on quantum of damages awarded by the lower court. As I said earlier, the insurer has already paid a huge proportion of the decretal sum. Therefore, I am not certain if the grounds raised therein are really triable and/or arguable.
26. Considering that extension of time is an equitable remedy, I hold that the applicant has come to court with unclean hands, after an inordinate delay, and has deliberately relayed the wrong information to the court. The only conclusion to be drawn is that she is out to delay the conclusion of this matter.
27. Therefore, the application for leave to appeal out of time is found to be without merit and is disallowed.
28. With respect to the question of stay of execution, Order 42 Rule 6(2) of the Civil Procedure Rules provides:
 - “(2) No order for stay of execution shall be made under sub rule (1) unless—
 - (a) the court is satisfied that substantial loss may result to the applicant unless the order is made and that the application has been made without unreasonable delay; and
 - (b) such security as the court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the applicant.”
29. Having declined to extend time to appeal out of time, I find that there is no foundation on which to base the application for stay.
30. In conclusion, the application is dismissed with costs to the respondent.

DATED, SIGNED AND DELIVERED AT MERU THIS 26TH DAY OF JANUARY, 2026.

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H. M. NYAGA

JUDGE

