

**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**  
**AT NAIROBI**

**MISCELLANEOUS NO. E 321 OF 2025**

**(as consolidated with Appeals Nos. E319 and E320 of 2025 and also E322 to 325 of 2025.)**

*(Before D. K. N. Marete)*

**MEDITEST DIAGNOSTICE SERVICES LIMITED.....CLAIMANT**

**AND**

**MERCY  
RESPONDENT**

**MWANZA.....**

**RULING**

This is an application dated 2nd September, 2025 seeking stay of execution of the decree together with certificate of costs in Milimani MCELRC cause No. E275 of 2023 dated 29.08.2025. It aspires to prevent the Claimant either by himself or his agent, representative or assigns from attaching, cutting away, selling or otherwise dealing with the Applicants movable or immovable properties. There is also a prayer that the decree and certificate of costs dated 29th August, 2025 be set aside.

The application further seeks that leave be granted to appeal out of time against the judgment delivered by the trial court on 30th July, 2025.

The Application is grounded on the basis that on 30th July, 2025 the trial court entered judgment in favour of the Claimant to the tune of Kshs.195,031.00 plus costs and interest at court rates from the date of such judgment. The Respondent, being dissatisfied and aggrieved by this judgment now wishes to lodge an appeal against the same, albeit out of time and submits that they have an arguable appeal with high chances and probability of success.

It is Applicant's further case averment that following the delivery of judgment on 30th July, 2025 the Applicant's management required time to convene a meeting with various stakeholders with a view to analyzing the judgment together with others emanating from the same court, assess their financial implications and determine the way forward. This process revealed substantial grounds meriting consideration at appeal. They, in finality, aver that a grant of this application will not occasion any prejudice to the Claimant/Respondent and prays that the application be granted in the interests of justice.

The Respondent in a Replying Affidavit sworn on 19th September, 2025 opposes the application and avers that the appeal has negligible chances of success in that the Applicant did not file a witness statement in the trial court and therefore the matter proceeded as a formal proof. The court looked at the list of documents and made a conclusive judgment and therefore the absence of an arguable appeal in the circumstances. Besides, Article 159(2)(d) of the Constitution of Kenya, 2010 as read with the oxygen principle should not be read in isolation of Article 159(2)(b) bearing in mind that three years have lapsed since the termination of the employment of the Respondent.

Moreover, the Applicant suffers indolence and falls short of the maxim that Equity aids the vigilant and not the indolent. The Respondent's vigilance should not be punished by allowing this application as the same was filed out of time and on the instigation of the Respondent's commencement of execution.

Overall, the Respondent submits that this application is prejudicial as the intention of the Applicant is to frustrate the Respondent who should be allowed to enjoy the fruits of their judgment. Notably, the cause of action arose in 2022 and the Applicant has all along not been keen to prosecute the appeal. Besides they have not demonstrated any substantial loss that cannot be compensated by way of damages.

The Applicant in their written submission dated 4th November, 2025 submits that they have demonstrated a substantial and arguable grounds of appeal with a high probability of success and therefore are deserving of the orders of stay of execution and extension of time. On this, they seek to rely on the authorities of **Butt v Rent Restriction Tribunal [1982] KLR 417** and **Nicholas Kiptoo Korir Salat vs Independent Electoral and Boundaries Commission & 7 others [2013] eKLR** where the superior court laid out the requirements for the exercise of a court discretion in a grant of such orders.

The Applicant further submits that it would suffer substantial and irreparable loss if stay of execution is not granted. This would cause an attachment of the Applicant's possession and properties thereby disrupting its medical diagnostic services. The specialized medical equipment and laboratory apparatus which comprise essential tools for medical practice would essentially be attached leading to a shutdown of the business and consequence loss of revenue. This would further lead to disability to serve its patient all of which would result in job losses and severe damage to Applicant's reputation. The appeal would ultimately be rendered nugatory as was set out in the authority of **Mukuma v Abuoga (1988) KLR 645** where the principle of substantial loss was upheld as a ground for grant of stay of execution.

The Applicant further justifies the issue of delay in filing of the appeal. Like is expressed in the application, the applicant posits that the delay was occasioned by legitimate practical and corporate consideration which necessitated a meeting to thrash out the issues of these numerous court cases and implications on business. To them, this delay was not unreasonable and was not occasioned by lack of *bona fides* on their part.

The Applicant in the penultimate further justifies a case for leave to appeal out time and seeks to rely on authority of **Nicholas Kiptoo Korir Salat vs Independent Electoral and Boundaries Commission & 7 others [2013] eKLR** where the court rightly observed that extension of time is not a right to parties but a equitable remedy that is available at the discretion of the court. This is awarded to parties who satisfy the court on the need to exercise such discretion in their favour. In the event of delay, the party should demonstrate that there is a reasonable excuse or reason for the delay and also allay fears of the possible prejudice that may befall the Respondent in the event of such grant of stay.

The Respondent in their written submission dated 14th November, 2025 oppose the application by relying on the authorities of **Nicholas Kiptoo Korir Salat vs Independent Electoral and Boundaries Commission & 7 others [2013] eKLR** (supra) and **Hassan Nyanje Charo v. Khatib Mwashetani & 3 Others SC Application No. 15 of 2014** where the Supreme Court observes the following as a prerequisite for granting an order of stay of execution,

*The discretion to extend time is unfettered. It is incumbent upon the Applicant to explain the reasons for delay in making the application for extension and whether there were any extenuating circumstances they could enable the court to exercise its discretion in favour of the Applicant.*

It is their case and submission that the Applicant does not in the circumstances present an arguable appeal that passes the test of been non-frivolous. This is because from day one, the Applicant did not file a witness statement and therefore the matter did not undergo a normal process of litigation. It was treated as a formal proof and therefore concluded wholesomely. Again, a reading of the grounds on the draft appeal displays a frivolous appeal that does not in any way display an arguable appeal as was elicited in the authority of **Gicharu v Waweru (Civil Appeal E1403 of 2024) [2025] KEHC 2565 (KLR)** and various other authorities.

The Respondent in the penultimate submits that the issue of inordinate has not been explained by the Applicant and had been treated casually even with the lapse of almost two months after the impugned judgment was delivered. The mention of the activities of the board after the judgment is not documented and further that the Applicant was awarded sufficient time and space to obtain, read and device the way forward on the matter. Instead, the Respondent waited for the process of execution to rise from their slumber.

The Respondent's case is the more plausible of the two. This is because the Applicant has *in toto* failed to satiate the requirements of Order 42 Rule 6(2)(a) of the Civil Procedure Rules on grant of stay of execution. Besides, the Applicant has not displayed a case of an arguable appeal that is tangible and credible and would withstand the test of being not frivolous. This is because of the conduct of the Applicant at the trial court where cautionary measures were not taken in prosecuting the matter now intended to be appealed against.

Secondly, the Applicant has not sufficiently explained the cause of the delay in raising the appeal. Through and through, they were aware of the timeline for the appeal but instead choose to engage in their boardroom matters at the expense of the litigation. Even if this were so, such activities are not demonstrated in evidence and therefore the suspicion that this could be an excuse to cover up an afterthought on their part.

Last but not least, an issue of stay of execution and leave to appeal out of time would grossly prejudice the Respondent who as waited all the way from 2022 when he lost his job to date and this application comes out as a delaying tactics to disable the Respondent from realizing the fruits of the judgment. It must therefore fail.

I am therefore inclined to dismiss this application with costs to the Respondent.

Delivered, dated and signed this **25th** day of **February** 2026.

**D. K. Njagi Marete**  
**JUDGE**

Appearances:

1. Mr. Mekenye instructed by Owuondo & Obinchi Company Advocates for the Applicant.
2. Mr. Nyangena instructed by Kerandi Maduko & Company Advocates for the Respondent.