



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NYANDARUA**

**MISCELLANEOUS CIVIL APPLICATION NO. E022 OF 2025**

**AMOS NJANE GITAHI..... APPLICANT**

**MICHAEL THUKU NJOROGE.....1<sup>ST</sup> RESPONDENT**

**MYCREDIT LIMITED ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. Amos Njane Gitahi, the applicant, brought this application by way of a Notice of motion dated 3<sup>rd</sup> October, 2025. The application is made under sections 1A,1B, 3A and 79G of the Civil Procedure Act; Orders 22, Rules 22, 42 Rule 6 and 51, Rule 1 of the Civil Procedure Rules & Article 159(2) (d) of the Constitution of Kenya. He is seeking the following orders:

- a) The service of this application in the first instance be disposed of in view of the urgency. [Spent]
- b) Pending hearing and determination of this application, the honourable court be pleased to stay the execution of the judgment and decree in the Engineer Senior Principal Magistrate’s Court Civil Case number E042 of 2024.
- c) The honourable court be pleased to grant the applicant leave to lodge an appeal against the entire judgment and decree in the Engineer Senior Principal Magistrate’s Court civil case Number E042 of 2024 out of time.
- d) The Honourable Court be pleased to stay the execution of the judgment and decree pending the hearing and determination of the intended appeal.
- e) The application shall be heard inter partes on such a date and time as this honourable court may direct.
- f) The costs of the application to abide by the outcome of the intended appeal.
- g) The honourable court be pleased to issue any other order and/or direction it may deem fit in the circumstances.

2. The application is premised on the following grounds:
  - a) The Judgment of the subordinate court was delivered on 10<sup>th</sup> June, 2025, wherein the applicant's case was dismissed with costs.
  - b) On 13<sup>th</sup> June, 2025, the applicant filed an application for review of the said judgment inter alia, which application was dismissed with costs on 7<sup>th</sup> October, 2025.
  - c) The applicant is aggrieved and/or dissatisfied by both the judgment and decree of the subordinate court as well as the dismissal of the application for review of the said judgment and decree.
  - d) The respondents are on the verge of attaching and/or selling the motor vehicle subject matter of the applicant's suit.
  - e) The applicant stands the risk of suffering substantial loss if leave to appeal and stay of execution is not granted, since he will be exposed to execution proceedings.
  - f) The application has not been brought after an inordinate delay
  - g) Since the decree sought to be appealed is not a money decree, there is no need for the applicant to furnish this honourable court with security.
  - h) No prejudice will be suffered by the respondents herein if the application is allowed.
3. The respondent opposed the application and raised the following reasons:
  - a) The application is incompetent, misconceived, and an abuse of the court process and the applicant, having already sought review of the impugned judgment, cannot now purport to seek leave to appeal against the same judgment.
  - b) The law is settled under section 80 of the Civil Procedure Act, and Order 45 rule of the Civil Procedure Rules that a party must elect either to seek review or to appeal, and having opted for review, the applicant is estopped from pursuing an appeal on the same decision.
  - c) The application amounts to an impermissible attempt to reopen and re-litigate issues already determined through the concluded proceedings, contrary to the principle of *finis litium*.
  - d) The present application is frivolous, vexatious, and intended to perpetuate endless litigation, contrary to the overriding objectives of the Civil Procedure Act and Rules, which emphasize the just, expeditious, proportionate, and affordable resolution of disputes.
  - e) The orders sought to be stayed are negative in nature and cannot possibly be stayed.

4. Section 80 of the Civil Procedure Act provides as follows:

*Any person who considers himself aggrieved—*

*a) by a decree or order from which an appeal is allowed by this Act, but from which no appeal has been preferred; or*

*b) by a decree or order from which no appeal is allowed by this Act, may apply for a review of judgment to the court which passed the decree or made the order, and the court may make such order thereon as it thinks fit.*

5. The applicant previously requested a review under Order 45 of the Civil Procedure Rules, but this request was denied. He is now requesting leave to appeal beyond the allowed timeframe. The respondents opposed this, arguing that it effectively reopens the case. The Supreme Court in **University of Eldoret & another v Sitienei & 3 others (Application 8 of 2020) [2020] KESC 76 (KLR)**, stated:

*3. Following the decision of the Court of Appeal, the applicants were faced with two options, to either file for review of the decision to the same court or pursue an appeal before the Supreme Court within either of the applicable jurisdictional contours. The applicants, as advised by their advocates, chose the former. They could not concurrently pursue both options, as that would be an outright abuse of judicial process. However, where a litigant had more than one option to pursue, he had to settle on one of them. The decision on which course to pursue was taken in advance and once it was taken, the other option was no longer available or placed in abeyance to be reverted to at a later stage in the event the initial option did not succeed. That meant that when choosing, the litigant was expected to choose the best available option since he could not have any further recourse.*

6. My opinion is that this Supreme Court decision is well-founded. The Court only needed to clarify that if an application for review is rejected, the party can request permission to appeal. However, if the party chooses to appeal, then the review process would be foreclosed. The logic is very simple; in review, issues are considered afresh.

7. Based on the above, I will allow the applicant to file an appeal within 15 days. The costs will be decided based on the outcome of the appeal. If he chooses not to appeal, then the respondents will be entitled to recover the costs of this application.

**Delivered and signed at Nyandarua, this 11<sup>th</sup> day of March 2026**

