



**Inzechelo & another v Kabutha (Miscellaneous Civil Application
E209 of 2025) [2026] KEHC 1123 (KLR) (29 January 2026) (Ruling)**

Neutral citation: [2026] KEHC 1123 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT THIKA
MISCELLANEOUS CIVIL APPLICATION E209 OF 2025
FN MUCHEMI, J
JANUARY 29, 2026**

BETWEEN

CLETUS UDUNGA INZECHELO 1ST APPLICANT

GEOTECH ELECTRICALS & HARDWARE 2ND APPLICANT

AND

SAMUEL MWANGI KABUTHA RESPONDENT

RULING

1. The application dated 10th November 2025 seeks for orders of leave to file an appeal out of time against the judgment delivered on 3rd October 2025 in Ruiru CMCC No. E028 of 2025. The applicants further seek for orders of stay of execution of the said rulings pending the hearing and determination of the appeal.
2. The respondent opposed the application and filed a Replying Affidavit dated 24th November 2025.

Applicants' Case

3. The applicants state that judgment in the trial court was delivered on 3rd October 2025 in favour of the respondent for a sum of Kshs. 1,500,000/- as general damages, Kshs. 100,000/- as future medical expenses and Kshs. 24,250/- as special damages. Being aggrieved with the judgment, the applicants state that they instructed their advocates to prefer an appeal against the judgment on liability. However, by the time sufficient instructions were given, time allowed to file an appeal had run out. The applicants aver that the email instructions from the insurance company instructing the advocates to file an appeal was sent on 6th November 2025. The applicants further aver that the delay occasioned is not so inordinate or so great as to be inexcusable.
4. The applicants state that they have an arguable appeal with high prospects of success and it is in the interests of justice that they be allowed to appeal the impugned judgment.



5. The applicants are apprehensive that execution against them may commence at any time since the stay period has lapsed. The applicants further state that the respondent has no known stable means of income and there is a likelihood that the decretal sum may not be recovered if paid out and in the event the appeal succeeds thus occasioning them loss.
6. The applicants argue that the outcome of the appeal may be rendered nugatory if no stay orders are issued. Further, the applicants aver that the insurer is ready to deposit the judgment sum in court as security and to abide by any conditions issued by the court.

The Respondent's Case

7. The respondent states that the instant application is intended to frustrate him from enjoying the fruits of his judgment and delay the execution and realization of the judgment issued.
8. The respondent states that the draft memorandum of appeal does not disclose prima facie an arguable appeal with high chances of success. Further the applicants have not demonstrated any prejudice that will be visited on them should they pay the decretal sum and costs of the suit whereas he will be denied an opportunity to enjoy the fruits of his judgment.
9. The respondent argues that the applicants have not demonstrated any substantial loss they would incur if execution were to proceed. The respondent further states that he was involved in an accident on 26th September 2024 where he sustained very serious injuries that rendered his right hip joint 30% permanently disabled which has adversely affected his health. The trial court found the applicants 100% liable and an award was made with the applicants' participation as they took part in the hearing and filed submissions in the lower court suit. The applicants did not call any witnesses and thus his testimony remained uncontroverted leading the court to find the applicants 100% liable.
10. The respondent states that court's judgments are not in vain and litigation must come to an end.
11. The respondent avers that he is a successful businessman capable of refunding the decretal sum in the event the applicants' appeal is successful. The respondent states that in the event the court is inclined to grant the orders sought, the applicants should be ordered to pay half the decretal sum of Kshs. 812,125/-
12. Parties put in written submissions.

The Applicants' Submissions

13. The applicants refer to the case of Edward Kamau & Another vs Hanna Mukui Gichuki & Another [2015] eKLR and submit that the decretal amount of Kshs. 1,624,250/- is colossal and the respondent has not filed any affidavit of means or produced any material evidence to prove that he will be able to recompense the said sum if the appeal succeeds. The onus is upon the respondent to show what resources he has.
14. The applicants submit that the instant application was lodged within seven days after the statutory time to appeal had lapsed. Thus the delay was not inordinate. On the issue of security, the applicants refer to the case of Selestica Limited vs Gold Rock Development Ltd [2015] eKLR and submit that the court has unfettered discretion in respect to the kind of security which ought not to be issued upfront before arguing an application for stay pending appeal.
15. The applicants submit that they have brought the instant application within reasonable time and thus request for leave to be allowed to file the appeal out of time. The applicants further submit that no prejudice shall be occasioned to the respondent if the application is allowed. On the contrary, they



stand to suffer irreparable loss if the application is not allowed. The applicants refer to the case of Edith Gichugu Koine vs Stephen Njagi Thoithi [2014] eKLR and submit that they are willing to pay but they are dissatisfied with the judgment of the lower court on liability.

16. The applicants submit that they have a good arguable case with great chances of success as they are aggrieved with the findings on liability. The applicants argue that the respondent was negligent while driving his motor vehicle. Thus the trial court should have found him liable to shoulder some percentage of the liability. The applicants rely on the case of Nicholas Kiptoo arap Korir Salat vs Independent Electoral and Boundaries Commission & 6 Others [2013] eKLR and urge the court to determine the issues of substantive justice as opposed to procedural technicalities.

The Respondent's Submissions

17. The respondent relies on the case of Samvir Trustee Limited vs Guardian Bank Limited Nairobi (Milimani) HCCC No. 795 of 1997 and submits that the applicants have not advanced any reasons why the court should be inclined to allow the prayer for stay of execution. The respondent further submits that he is suffering immense prejudice and shall continue to suffer such prejudice as the damages awarded to him arose out of grievous injuries he sustained on 26th September 2024. Judgment was delivered on 3rd October 2025 and he has been kept out of reach of the monies due to him. Further, the court's award is substantial and is affecting his life adversely.
18. The respondent submits that he is the successful party and court judgments are not delivered in vain. The decretal sum is outstanding and the applicants have not made any proposals towards the settlement. Further, the applicants have only awoken from their slumber by the lapsing of stay of execution period of 30 days. The respondent argues that the applicants slumbered on their rights and have come to the court with unclean hands which the court cannot aid.
19. The respondent relies on Section 79G of the *Civil Procedure Act* and the cases of Paul Musili Wambua vs Attorney General & 2 Others [2015] eKLR and Nicholas Kiptoo arap Korir Salat vs Independent Electoral & Boundaries Commission & 7 Others (no citation given) and submits that the applicants excuse the delay in issuing instructions to appeal without sufficient reason. The application was filed 7 days after the lapse of the 30 days right of appeal lapsed. Thus, the applicants have not laid any basis as to why extension should be granted.
20. The respondent further refers to the cases of Alibhai Musajee vs Shariff Mohammed Al-Bet Civil appeal No. 283 of 1998 and Velji Shahmad vs Shamji Bros. and Popatlal Karman & Co. [1957] EA 438 and submits that extension of time is not a right of a party but is only available to a deserving party at the discretion of the court.

The Law

Whether the court should exercise its discretion to grant the applicants leave to file their appeal out of time;

21. Section 79G of the *Civil Procedure Act* states:-

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 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.

22. It is clear from the wording of section 79G of the *Civil Procedure Act* that before the court considers extension of time, the applicant must satisfy the court that that he has good and sufficient cause for filing the appeal out of time. This principle was enunciated in the case of *Diplack Kenya Limited vs William Muthama Kitonyi* [2018]eKLR an applicant seeking enlargement of time to file an appeal or admission of an already filed appeal must show that he has a good cause for doing so.
23. The Supreme Court in the case of *Nicholas Kiptoo Korir arap Salat vs IEBC and 7 Others* [2014] eKLR enunciated the principles applicable in an application for leave to appeal out of time. The court stated inter alia that:-

“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.

24. Similarly in the case of *Paul Musili Wambua vs Attorney General & 2 Others* [2015]eKLR, the Court of Appeal in considering an application for extension of time and leave to file the Notice of Appeal out of time stated the following:-

“.....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.”

25. Judgment in the trial court was delivered on 3rd October 2025 in the presence of both advocates. The current application was filed on 10th November 2025 which is about seven (7) days outside the time limited for filing an appeal. The applicants attribute the delay to the insurance company for giving instructions to appeal on liability late. I have perused the record and noted that judgment was delivered in the presence of both advocates of the parties. The insurer was thus notified of the said judgment as early as the date of judgment which is 3rd October 2025 but did not give instructions to appeal on time. The insurer has not given any reasons why it took them so long to give instructions to appeal. The



email correspondence between the insurer and their advocates show that the insurance company was aware of the judgment and execution as they sent an email on 3rd November 2025 on the respondent's advocates giving an extension to avoid execution.

26. However, I have considered that the delay was not on part of the applicants per se but on their insurance, and considering that the delay was only seven (7) days, the period was short. As such, I hold the seven (7) days delay to be reasonable and excusable based on the normal office operations of any such company.
27. I hereby find the application merited and allow it in the following terms: -
 - a. That the applicant has fourteen days extension of time to appeal and in default of compliance, these orders shall stand vacated.
 - b. That the costs of this application shall abide in the appeal.
28. It is hereby so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT THIKA THIS 29TH DAY OF JANUARY 2026.

F. MUCHEMI

JUDGE

