



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**Mwangi & another v Gachago (Civil Appeal E117 of 2025)
[2026] KEHC 1140 (KLR) (22 January 2026) (Ruling)**

Neutral citation: [2026] KEHC 1140 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT THIKA
CIVIL APPEAL E117 OF 2025
FN MUCHEMI, J
JANUARY 22, 2026**

BETWEEN

JANE WANJIRU MWANGI 1ST APPLICANT

MURIUNGI PIUS M'AMBU TU 2ND APPLICANT

AND

JAMES KAMAU GACHAGO RESPONDENT

RULING

1. The application for determination is that of the appellant dated 12th May 2025 as well as the one dated 1st August 2025.
2. The first application in prayer 2 seeks for orders to appeal out of time. The prayer for stay of execution in the same application was struck out by the court after the applicant failed to deposit security of 1/3 of the decretal amount as ordered on 14th May 2025. It is on record that the applicant on 13th June 2025 deposited only Ksh.2.3 million in court following extension of time with two (2) days. On his own application, this court gave further extension of time of ten (10) days to deposit the balance of Ksh.2.8 M but the applicant failed to comply within the said period or at all.
3. It is important to note that the applicant later filed one application after another seeking for orders stay of execution and review of the court's orders of 28th July 2025. The said orders ordered the striking out of stay following non-compliance of the orders.
4. On 02/12/2025, the applicant withdrew the applications dated 24th June 2025, and 12th August 2025 leaving only the two mentioned earlier herein.
5. The second application dated 1st August 2025 of the applicant seeks for review of the court's orders striking out the prayer for stay in his application dated 12/05/2025.



6. In response to the application of the applicants, the respondent filed a replying affidavit sworn on 4th day of December 2025. The respondent's application dated 16th May 2025 sought to set aside the interim orders for stay of execution made on 14/05/2025. The court directed that the said application be treated as a response to the applicant's application dated 12/05/2025.
7. The court has considered the material put before it in these applications and identified the issues arising herein as follows: -
 - a. Whether the applicant has made a case for extension of time to appeal against the judgment of the court below Ruiru Small Claims Court Case No. E402 of 2021.
 - b. Whether the orders of the court made on 05/08/2025 striking out the prayer for stay of execution should be reviewed.
8. The only reason given for delay in filing the appeal was that the applicant's case in the lower court was being handled by Kimondo Gachoka & Co. Advocates who did not brief him of the progress and in particular, that judgment had been delivered. He learnt of it late and instructed the firm of Githinji Mwangi and Associates who are on record for him in this matter. The time to file the appeal had already lapsed.
9. It is noted that the applicant's reasons for delay are not persuasive in that his advocate and himself ought to have followed up their case up to the very end but they failed to do so. No sufficient or cogent reason has been given to justify this court to exercise its discretion in the applicant's favour and as such, the prayer for extension of time to appeal fails.
10. As for review of the orders of the court striking out the prayer for orders for stay of execution, the history of this matter speaks for itself. It has been one of non-compliance with the orders for deposit of security despite being given extension of time on two occasions. Order 42 Rule 6 of the Civil Procedure rules requires that security for costs be provided. This was the reasons for striking out the said prayer in the application dated 12th May 2025. Indeed, the court would have struck out the whole application save for the fact that there was a prayer for extension of time to appeal. Article 50 of the Constitution gives every person the right to be heard and that is why this court gave the applicant the chance to be heard in the prayer for extension of time. As for striking out the prayer for stay of execution, this was based on valid grounds of non-compliance with court orders based on the provisions of order 42 of the Civil Procedure Rules.
11. The applicant has not satisfied the requirements of Order 45 (1) of the Civil Procedure Rules of demonstrating discovery of new and important evidence. No new evidence has been adduced herein that did not exist at the time the said orders were made. As for the orders of status quo, they were of temporary nature pending compliance with the orders for deposit of security. These orders expired with the failure to deposit security despite having been given sufficient time by the court.
12. It is important to note that during the subsistence of the status quo orders, the applicant disposed of his two vehicles reg. No.KCJ 094 H and KCD 474 Q which had already been proclaimed. The applicant did not deny these facts which were presented before the court orally and are explained before in the replying affidavit of the respondent as sworn on 4th December 2025. In my view, this was an action intended to defeat execution and also a breach of the status quo orders. It is indeed an act of dishonesty and breach of the law.
13. Consequently, I find the applications dated 12th May 2025 and that dated 01/08/2025 lacking merit and dismiss them with costs to the respondent.



14. As for the Respondent's application dated 16th May 2025, I am of the considered view that the prayers of discharging/setting aside the interim orders of stay and for striking out the application dated 12th May 2025 have been over taken by events.

15. It is hereby so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT THIKA THIS 22ND DAY OF JANUARY 2026.

F. MUCHEMI

JUDGE

