

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYERI

HIGH COURT CIVIL MISCELLANEOUS CASE NO. E058 OF

2025

JANE MUTHONI MWAURA

**TERESA NYAWIRA KARANI (suing as the Legal
Representatives of the estate of JOSHUA GATIMU
KARANI.....APPLICANTS**

VERSUS

2NK CO-OPERATIVE SAVINGS &

CREDIT SOCIETY LIMITED.....1ST

RESPONDENT

GEORGE NGARI MACHINA.....2ND

RESPONDENT

RULING

1. Before this Court is the Notice of Motion dated **4th August 2025** by which the Applicants **JANE MUTHONI MWAURA** and **TERESA NYAWIRA KARANI (Suing as the Legal**

**Representatives of the estate of JOSHUA GATIMU
KARANI (Deceased) seek the following orders:-**

“1. SPENT.

**2. THAT the Applicants be granted leave to appeal
the**

**judgment and decree of the Honourable
Kaimenyi Kanyiri**

**delivered on the 10th day of June, 2025 in
Karatina Chief Magistrate’s Court Civil Suit No.
MCCC/2072/2022 out of the statutory time.**

**3. THAT the draft Memorandum of Appeal annexed
hereto**

**be deemed as having been filed within the
extended period upon payment of the requisite
court fees.**

4. SPENT.

5. SPENT.

**6. THAT there be a stay of execution of the
judgment and**

decree of the Honourable Kaimenyi Kanyiri delivered on the 10th day of June, 2025 in Karatina Chief Magistrate's Court Civil Suit No. MCCC/E072/2022, pending the hearing and determination of the intended appeal.

7. **THAT** the costs of this application be in the cause."

2. The application was premised upon **Sections 1A, 1B, 3A, 63 (e) and**

79 (e) of the Civil Procedure Act (Cap 21), Order 42 Rule 6,

Order 50 Rule 6 and Order 51 Rule of the Civil Procedure Rules

2020 and all enabling provisions of law and was supported by the

Affidavit of even date sworn by the 1st Applicant.

3. The Respondents **2NK SACCO CO-OPERATIVE SAVINGS & CREDIT**

SOCIETY LTD and GEORGE NGARI MACHINA opposed the

application through the Replying Affidavit dated **1st October 2025**

sworn by **KARWERU MUCHEMI CHARLES** an advocate of the High Court of Kenya.

4. The matter was canvassed by way of written submissions. The Applicants

filed the written submissions dated **24th November 2025** whilst the

Respondent relied upon their written submissions dated **3rd December 2025**.

BACKGROUND

5. The Applicants had filed a suit being **Karatina MCC E072 of 2022**

before the Magistrates Court seeking special and general damages in

respect of a motor vehicle accident. The suit was heard in the Lower

Court and vide the judgment delivered on **10th June 2025**

Hon.

KAIMENYI KANYIRI sitting at the **Karatina Law Courts**
dismissed

the suit and awarded costs to the Defendant.

6. The Applicants were aggrieved by the decision of the trial court and now

purpose to file an appeal. They filed this application seeking for extension

of time within which to file the appeal and also praying for a stay of

execution of the said judgment pending appeal.

ANALYSIS AND DETERMINATION

7. I have carefully considered the application before this court, the reply

filed thereto as well as the written submissions filed by both parties.

8. **Section 79G** of the **Civil Procedure Act Cap 21, Laws of Kenya**

provides as follows:-

“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.” [Own emphasis]

9. Therefore the statutory period allowed within which one is required to

file an appeal is **thirty (30) days**. However with the leave of the court

this statutory period may be extended.

10. In the case of **NICHOLAS KIPTOO ARAP SALAT -vs- IEBC & 7**

Others [2014] ECLR, the **Supreme Court of Kenya** enunciated the principles applicable in considering an application for leave to file appeal out of time as follows:-

“(a) Extension of time is not a right of any party. It is

an equitable remedy that is only available to deserving party at the discretion of the court.

(b) A party who seeks for extension of time has the burden of laying a basis of 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.”

11. Likewise in the case of **PAUL MUSILI WAMBUA -VS- ATTORNEY**

GENERAL & 2 Others [2015] eKLR the **Court of Appeal** in considering an application for leave to file appeal out of time stated as

follows;-

“.....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 exercise 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 the 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.”

12. The law and authorities are clear that the decision of whether or not to

allow an extension of time to file appeal lies squarely within the

discretion of the court. Such leave ought only be granted when sufficient cause is shown.

13. The impugned judgment was delivered on **10th June 2025**.

As such

the appeal ought to have been filed within thirty (30) days of that date.

This application for extension of time was filed on **4th August 2025**

approximately **two (2) months** after delivery of said judgment.

14. The Applicants have explained that they and their legal counsel were

engaged in analyzing the judgment hence the delay. I will not comment

on the reasons advanced save to say that in my view the delay of two

(2) months is not inordinate.

15. The Applicants have annexed to the supporting affidavit a draft

Memorandum of Appeal (Annexure '**JMM2**'). It is not the business of

this court to determine the merits or otherwise of the intended appeal.

In my view the Draft Memorandum raises triable issues which the

Applicants ought to be allowed an opportunity to ventilate. I therefore

find merit in the prayer for extension of time and the same is hereby

allowed.

16. The Applicants have sought for a stay of execution of the judgment

delivered on **10th June 2025** pending the hearing and determination

of their intended appeal. I have carefully perused the judgment dated

10th June 2025. The trial court in that judgment dismissed in its

entirety the suit which had been filed by the Applicants and awarded

costs to the Respondents.

17. Dismissal of a suit is a '**negative order**' since such order of dismissal

does not require any party in the suit to do or to desist from doing any

action. Such a negative order cannot in law be stayed.

18. The Applicants have submitted that they are apprehensive that the

Respondents may proceed to execute the judgment to their detriment.

What orders exactly would the Respondents be executing?

19. In the case of **REGISTERED TRUSTEES KENYA RAILWAYS STAFF**

BENEFITS SCHEME -VS- MILIMO, MUTHONI & CO.

ADVOCATES

& 2 Others 2021 eKLR the court stated as follows:-

“.....Negative orders cannot be stayed.”

20. Similarly in **WESTERN COLLEGE OF ARTS and APPLIED SCIENCE**

-VS- ORANGA & Others [1976] 1 KLR, the **Court of Appeal** stated

that:-

“Additionally even if we had the requisite jurisdiction, this court has said time without number that stay orders cannot issue in respect of negative orders, where the court has not ordered any of the parties to perform any task.....”

21. Finally in the case of **JOHN MBUGUA -VS- KENYA COMMERCIAL**

BANK [2021] eKLR, the Court held that an order dismissing a suit

was a negative order and was incapable of being stayed.

22. The prayer for stay therefore falls flat on its face and is dismissed.

23. Finally this application is only partially successful. This court makes the

following orders:-

- (1) The Applicants are granted a thirty (30) day extension from the date of this ruling within which to file their appeal.**
- (2) The Annexed Draft Memorandum of Appeal is to be deemed as duly filed upon payment of the requisite Court fees.**
- (3) The application for stay of execution of the judgment delivered on 10th June 2025 in Karatina CMCC No. MCCC/E072/2022 is dismissed.**
- (4) Each party to meet their own costs for this application.**

Dated in Nyeri this 13th day of March 2026.

.....
MAUREEN A. ODERO
JUDGE

ORIGINAL