

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MACHAKOS**  
**CIVIL APPEAL NO. E156 OF 2025**

**BETWEEN**

**KUBRI ROAD WORKS LIMITED..... APPELLANT  
/APPLICANT**

**AND**

**DESTINY HAULIERS LIMITED.....1<sup>ST</sup>  
RESPONDENT**

**MAMALO AUCTIONEERS..... 2<sup>ND</sup>  
RESPONDENT**

**RULING**

1. The applicant moved this court through a Notice of Motion application dated 4<sup>th</sup> July 2025, supported by an affidavit of even date. The application is brought under sections 1A, 1B & 3A of the Civil Procedure Act, Order 22 Rule 22 & Order 10 Rule 11 of the Civil Procedure Rules 2010 and all other enabling provisions of law. It seeks the following orders:

***1. THAT there be a stay of execution pending the hearing of the intended Civil Appeal to be lodged by the applicant against the judgement and decree of the Honorable Derrick Kuto (SPM) delivered on 14<sup>th</sup> May 2025.***

**2 THAT a conditional stay of execution be issued to the applicant subject to a security deposit of Kshs.500, 000 to the court within 30 days.**

**3.THAT this Honorable Court be pleased to set aside the Judgement delivered by the Honorable Derrick Kuto (SPM) delivered on 14<sup>th</sup> May 2025.**

**4. THAT the Honorable Court does issue an order to the respondents to release the applicant's Motor Vehicle Registration Number KBK 180D/ZD 5914.**

**5. THAT this Honorable Court be pleased to grant leave to the applicant to file their appeal out of time.**

**6. THAT this Honorable Court be pleased to confirm the Memorandum of Appeal filed out of time by the applicant as having been duly filed.**

**7. THAT the Court be at liberty to make any order in the interests of justice.**

**8. THAT the costs of this application be costs in the intended appeal.**

### **Applicant's Case**

2. The applicant argues that it has satisfied the statutory requirements for stay of execution pending appeal under Order 42 Rule 6(2) of the Civil Procedure Rules. It submits

that the respondent will suffer no prejudice since the applicant is willing to deposit security of kshs.500,000/-.

3. The applicant contends that this application has been made in good faith to prevent the appeal from being rendered nugatory and to ensure that justice is served for both parties.
4. The applicant urges the court to exercise its discretionary under Section 3A of the Civil Procedure Act, to facilitate justice by granting stay of execution pending determination of the appeal.

### **Respondent's Case**

5. The 1<sup>st</sup> respondent opposes this application through a replying affidavit dated 29<sup>th</sup> September 2025. It is its case that judgment was entered in its favor in Mavoko RMCC NO.1613 of 2018 against applicant and the decretal sum stood at Kshs.4,123,762.92.
6. It argues that the attachment of motor vehicle registration KBK180D/ZD5914 was lawful, being made pursuant to execution of a valid decree issued by a court.
7. The respondent further contends that the applicant has failed to sufficiently explain why it did not lodge the appeal within the prescribed time.

### **Analysis and Determination**

8. I have considered the pleadings and submissions before me. The key issue for determination is whether the applicant has met conditions for grant of leave to appeal out of time.

9. Section 79G of the **Civil Procedure Act** provides :

**“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.”**

10. The Supreme Court in the case of **Nicholas Kiptoo Korir arap Salat v IEBC and 7 Others [2014] eKLR** outlined the guiding principles for extension of time, the principles applicable when considering an application for leave to appeal out of time. At paragraph 85 the court stated, ***“we derive the following as the under-lying principles that a court should consider in exercise of such discretion: Extension of time is not a right of a party. It is an equitable remedy that is only available to a deserving party at the discretion of the court; A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the court. Whether the court should exercise the discretion to extend time, is a consideration to be made on a case to case basis; Whether there is a reasonable reason for the delay. The***

***delay should be explained to the satisfaction of the court; Whether there will be any prejudice suffered by the respondents if the extension is granted; Whether the application has been brought without undue delay; and Whether in certain cases, like election petitions, public interest should be a consideration for extending time.”***

11. Applying these principles, the judgment herein was delivered on 14th May 2025. The applicant filed the present motion on 4th July 2025, well beyond the thirty-day limit. Crucially, the applicant has not provided any explanation for the delay. Extension of time is discretionary, and the entire period of the delay ought to be stated and explained to the satisfaction of the Court. Mere invocation of “interests of justice” without a factual basis does not suffice.
12. In the absence of a reasonable and sufficient explanation, the court cannot exercise its discretion to extend time. As such, I do not see any reason to grant the extension of time to file the appeal out of time. Consequently, there is no valid appeal before this court.
13. On the issue of stay of execution, such an order can only be granted where there is a pending appeal. Since no valid appeal exists, the prayer for stay must fail.
14. In light of the foregoing, the Notice of Motion dated 4<sup>th</sup> July 2025 is dismissed with costs to the respondent.

It is so ordered.

Dated, signed and delivered at Machakos this 12<sup>th</sup> day of  
March, 2026

**RHODA RUTTO**  
**JUDGE**

**In the presence of;**

.....Applicant

.....respondent

Selina Court Assistant