



REPUBLIC OF KENYA



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

**Chap Chap Solution Company Limited v Kalungo & another (Civil Miscellaneous
E219 of 2025) [2026] KEHC 3968 (KLR) (25 March 2026) (Ruling)**

Neutral citation: [2026] KEHC 3968 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
CIVIL MISCELLANEOUS E219 OF 2025
A MABEYA, J
MARCH 25, 2026**

BETWEEN

CHAP CHAP SOLUTION COMPANY LIMITED APPELLANT

AND

LILIAN NGUMA KALUNGO 1ST RESPONDENT

YOMUKO AUCTIONEERS 2ND RESPONDENT

RULING

1. Before me is a Motion on Notice dated 28/10/2025 by the appellant. The same was brought under sections 3A & 3B of the *Civil Procedure Act*, Section 7 of the *Appellate Jurisdiction Act* & Rule 4 of the Court of Appeal Rules. It sought leave to file an appeal out of time as well as stay of execution of the judgment and decree in Kisumu HCCA NO. E068 of 2024 pending the hearing and determination of the intended appeal.
2. The grounds upon which the application was brought were set out in the body thereof and in the supporting affidavit of Francis Omer sworn on 28/10/2025. These were that the appellants were aggrieved by the judgment delivered by this court on the 9/12/2024.
3. That consequently, its former advocate failed to inform it of the judgment of and further failed to file the Notice of Appeal within the requisite time of 14 days. That it only became aware of the judgment from a third party seeking payment of the decretal amount of Kshs. 3,120,000/- and costs of Kshs. 248,823/-.
4. That as a result thereof, there had been a delay of 10 months from when the judgment was delivered and when it filed the present application. That the delay was not occasioned by any indolence, unwillingness or deliberate omission on its part.



5. That the execution of the said judgment is imminent and will subject the applicant to immense prejudice and injustice considering the substantial amount of the decretal sum and costs awarded against it.
6. That it is willing to abide by any conditions imposed by the Court including depositing of security for the decretal sum or adhering to an accelerated timetable for filing the Record of Appeal in order to mitigate any prejudice from the 1st respondent.
7. The application was opposed vide a replying affidavit sworn on the 31/10/2025 by Joseph Musomba, advocate for the respondent in which he deposed that the delay of 323 days in filing the application was inordinate, that the applicant's outgoing counsel served him with a Notice of Appeal and letter requesting for proceedings both dated 18/12/2024 but took no steps after that.
8. That therefore, the applicant's contention that the judgment was not communicated was an afterthought meant to mislead the Court. That the present application was filed when the applicant was asked on how it intended to settle the decretal sum.
9. That this matter has been pending for 8 years and litigation ought to come to an end thus this Court ought not to exercise its discretion in favour of a party who has approached Court with unclean hands. That the application is only intended on forestalling and frustrating the execution process.
10. I have considered the record. Section 7 of the *Appellate Jurisdiction Act* grants this Court power to extend time for a party to file a notice of appeal. In *Edward Njane Nganga & another v Damaris Wanjiku Kamau & another* [2016] eKLR, it was held that: -

“... Section 7 of the *Appellate Jurisdiction Act*, Cap 9 is drawn as follows: -

Section 7 Power of High Court to extend time.

The High Court may extend the time for giving notice of intention to appeal from a judgment of the High Court or for making an application for leave to appeal or for a certificate that the case is fit for appeal notwithstanding that the time for giving such notice or making such appeal may have already expired...It will be seen from the above that Section 7 is explicit, that the High Court (which now in light of *the Constitution* of Kenya 2010 needs to be construed as also including the Environment and Land Court and the Industrial Court), may extend time for giving notice of intention to appeal from a judgment of the High Court. The intention to appeal is the Notice of Appeal. I think Section 7 does not need any more than a literal interpretation. Jurisdiction is clearly conferred to the High Court to extend time for the filing of a Notice of Appeal. To decide otherwise is akin to completely disregarding, what in my view, is a clear provision in the law.

Neither am I of the view that there is any conflict between the above provision and the provisions in the Court of Appeal Rules. Rule 4 of the Court of Appeal Rules also gives the Court of Appeal power to extend time, but it does not say that it is the Court of Appeal with exclusive power, in so far as the filing of a Notice of Appeal is concerned. That provision is drawn as follows: ...”

11. In *Niazons (K) Ltd v China Road & bridge Corporations (Kenya)* [2000] eKLR, it was held as follows:

“As regards extension of time in which to file Notice of Appeal and lodge Record of Appeal under Rule 4 of the Rules of this Court, there are numerous decisions of this Court to the



effect that this Court has unfettered discretion. It is upon the applicant to explain to the satisfaction of the court that this discretion ought to be exercised in its favour. Although this is unfettered discretion but like all judicial discretion, it must be exercised on reason not caprice, and the exercise of that discretion must not be arbitrary or oppressive.

In *Leo Sila Mutiso v Rose Hellen Wangari Mwangi* Civil Application No. NAI 255 of 1997 (unreported) this Court in dealing with the issue of application for extension of time within which to file and serve Notice of Appeal and Record of Appeal stated inter alia: -

“It is now well settled that the decision whether or not to extend the time for appealing is essentially discretionary. It is also well settled that in general, the matters which this Court takes into account in deciding whether to grant an extension of time are first the length of the delay. Secondly, the reason for the delay, thirdly (possibly) the chances of the appeal succeeding if the application is granted, and, fourthly, the degree of prejudice to the respondent if the application is granted.”

12. And in *Nicholas Kiptoo Salat Arap Korir Salat v Independent Electoral and Boundaries Commission & 7 others* [2014] eKLR, the Supreme Court of Kenya set out the principles for consideration for extension of time: -

“This being the first case in which this Court is called upon to consider the principles for extension of time, we derive the following as the under-lying principles that a Court should consider in exercise of such discretion:

1. 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;
2. A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the court
3. Whether the court should exercise the discretion to extend time, is a consideration to be made on a case to case basis;
4. Whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the Court;
5. Whether there will be any prejudice suffered by the respondents if the extension is granted;
6. Whether the application has been brought without undue delay; and
7. Whether in certain cases, like election petitions, public interest should be a consideration for extending time.”

13. Turning back to the case at hand, the impugned judgment was delivered on the 9/12/2024 while the present application was filed on the 28/10/2025. This is a delay of over 10 months. Indeed, this is an inordinate delay.
14. The applicant laid the blame on his previous Counsel stating that he failed to inform it of the judgment and further failed to file the Notice of Appeal within the requisite time of 14 days.
15. This was controverted by the respondent who deposed that contrary to the averments by the applicant, the applicant’s outgoing counsel served him with a Notice of Appeal and letter requesting for proceedings both dated 18/12/2024 but took no further steps after that. This assertion by the



respondent was not denied by the applicant. The Court will therefore take it to be the truth, that a Notice of Appeal dated 18/12/2024 had been filed and served.

16. That being the case, the Notice of Appeal seems to have been filed and served within time. Of what use is the extension of time then being sought? That was never explained. The applicant had 60 days to lodge the appeal in the next Court. However, the applicant having applied for proceedings in writing, still it can lodge the Record of Appeal in the Court of Appeal if there is a Certificate of Delay issued. The prayer for extension of time is therefore misplaced.
17. As regards stay of execution, this Court's jurisdiction under Order 42 Rule 6 of the Civil Procedure Rules was never invoked. The provisions of the law cited do not permit this Court to order a stay of execution. If the Court attempted to deal with that prayer on the basis of those provisions, which principles will it apply? The known principles are only under Order 42 Rule 6.
18. By not having invoked the right jurisdiction, that will prejudice the respondent as, whereas the prayer for extension of time could be responded to by a replying affidavit of Counsel, as happened in this case, not so for a prayer for stay of execution under Order 42 Rule 6. I say so because, under that provision, only the litigant himself can swear positively of his/her ability to refund the decretal sum if it is paid and the appeal ultimately succeeds. An advocate cannot respond to an affidavit of an applicant who states that he or it will suffer substantial loss if the decretal sum is paid over.
19. In this regard, I find that the prayer for stay was also not well founded and the same is declined.
20. Accordingly, the Motion dated 28/10/2025 is found to be without merit and is dismissed with costs.
It is so ordered.

DATED AND DELIVERED AT KISUMU THIS 25TH DAY OF MARCH, 2026.

A. MABEYA, FCI Arb

JUDGE

