

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT SIAYA
MISC. APPLICATION NO. E006 OF 2026

SIMBA COLT EAST AFRICA LTD.....APPLICANT

VERSUS

**DORINE ACHIENG ODHIAMBO (Suing as
the personal representative to the Estate
of Dennis Omondi (Deceased)).....
.....RESPONDENT**

RULING

1. The Applicant herein has filed an application dated 23/1/2026 seeking the following reliefs:

- i) Spent.
- ii) That the Applicant be granted leave to file an appeal out of time from the judgment of the trial court delivered on 9/12/2024.
- iii) That an interim order of stay of execution of the judgment and decree in the sum of kshs2,798,080/=

together with costs in Ukwala PMCC E047/2024 be granted pending determination of the application.

- iv) That an interim order of stay of execution of the judgment and decree in Ukwala PMCC E047/2024 be granted pending determination of the intended appeal.

2. The application is supported by the grounds set out thereunder and the affidavit of Mary Ongonga, sworn on even date. The Applicant's gravamen is inter alia; that the trial court delivered judgment on 9/12/2025 to which the Applicant is aggrieved; that the Applicant has prepared a draft Memorandum of Appeal which raises triable issues which merit consideration by the court; that the delay to lodge the appeal was caused by internal communication regarding the dispatch of instructions between clients and advocates and further attributed to the fact that most staff in the department were on leave; that the delay to lodge appeal is excusable; that the amount of quantum awarded by the trial court is excessive and that the Applicant stands to suffer irreparable loss and prejudice as the ability of the Respondent to refund the decretal sums is unknown; that the appeal is meritorious and has high chances of success; that unless an order of stay of execution is granted, the appeal stands to be rendered nugatory; that he Applicant is ready and willing to provide a bank guarantee from Family Bank Limited as security for the stay of execution pending determination of the

intended appeal; that the application has been filed without unreasonable delay; that the Respondent will not be prejudiced if the application is allowed.

3. The application was opposed by the Respondent who filed a replying affidavit sworn on 17/2/2026 wherein she averred inter alia; that the Respondent has not commenced execution of the decree and hence the application is premature; that the conditions under Order 42 Rule 6 of the Civil Procedure Rules have to be complied with by the Applicant; that the Respondent is suffering from the Applicant's indolence and refusal to settle the decree; that the appeal on quantum does not have any chances of success; that the application is misconceived and ought to be dismissed.
4. The application was canvassed by way of written submissions.
5. I have considered the application, rival affidavits, and the submissions tendered. I find the issue for determination is whether the application has merit.
6. It is noted that the Applicant's principal prayers are namely, leave to appeal out of time and an order for stay of execution of the decree in Ukwala PMCC No. E047 of 2024 pending the determination of the intended appeal.

7. As regards the issue of leave to lodge appeal out of time, Section 79 of the Civil Procedure Act 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 preparation and delivery to the Appellant 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.”

From the foregoing provision, the Appellant was under an obligation to satisfy the court that it had good and sufficient cause for not filing the appeal in time to enable the court to grant the request sought. The Applicant’s counsel has rendered an explanation for the delay to the effect that it took time to receive instructions from the client on the need to lodge an appeal and further, due to the fact that the staff were away over the Christmas festive season, the Applicant now beseeches this court to allow it to file its appeal out of time. It is noted that the judgment of the trial court was delivered on 9/12/2025, and hence the Memorandum of Appeal ought to have been filed by close of business on 9/1/2026. It is noted

that the Applicant approached the court on 23/1/2026, which a period exceeding the stipulated 30 days period for appeal. I find the delay of 14 days is not an inordinate delay in my view and is excusable. The reasons for the delay are plausible and should be accepted. In the case of **Nicholas Kiptoo Korir Arap Salat Vs IEBC and 7 Others [2014] eKLR** the Supreme Court outlined the principles applicable in an application for leave to appeal out of time as follows:

“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 that seeks an 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.***

Also, in the case of **Paul Musili Wambua Vs Attorney General and 2 Others [2015] eKLR** the Court of Appeal while considering a similar application for extension of time and leave to file notice of appeal out of time held 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 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 reasons 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.”

Being guided by the foregoing authorities, it is noted that the impugned judgment was delivered on 9/12/2025 and that the 30 days period of appeal lapsed on 9/1/2026. The present application was filed 14 days thereafter. I find the period not that inordinate. I find that the Respondent will not be prejudiced if the application is allowed as she can be cushioned by an award of costs. In any event, the Applicant's right to access justice under Article 48 of the

Constitution should not be hindered so to enable it have its day in court.

8. As regards the prayer for an order for stay of execution of the decree, Order 42 Rule 6 of the Civil procedure Rules provides as follows:

(1) No appeal or second appeal shall operate as a stay of execution or proceedings under a decree or order appealed from except in so far as The Court appealed from may for sufficient cause order stay of execution of such decree or order, and whether the application for such stay shall have been granted or refused by the court appealed from, the court to which such appeal is preferred shall be at liberty on application being made, to consider such application and to make such order thereon as may to it seem just, and any person aggrieved by an order of stay made by the court from whose decision the appeal is preferred may apply to the appellate court to have such order set aside.

(2) No order for stay of execution shall be made under sub rule (1) unless -
a) the court is satisfied that
substantial loss may result to the

applicant unless the order is made and that the application has been made without unreasonable delay;
b) such security as the court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the Applicant.

9. As regards the aspect of substantial loss, the Applicant has averred that the decretal sums are colossal and that if paid out to the Respondent, then the Applicant will suffer prejudice as there is no evidence that the Respondent will refund the same in the event of success of the appeal. Indeed, the decretal sum is a tidy sum by any standard. The Respondent in her replying affidavit did not make any averments regarding her ability to refund the sum or that she is a person of means. I am satisfied that the Applicant stands to suffer substantial loss if the order is not granted.
10. As regards the issue of whether the application has been filed timeously, it is noted from the preceding paragraphs that the delays is only 14 days which has been found not to be inordinate.
11. As regards the aspect of security, the Applicant has offered to deposit a bank guarantee from Family Bank Ltd pending determination of the appeal. The Respondent in

her replying affidavit did not respond to the Appellant's proposal on the deposit of security and hence she is deemed to be okay with it. As the Applicant has offered to deposit security, then I find that it has satisfied the aforesaid condition.

12. In view of the foregoing observations, the Applicant's application dated 23/1/2026 has merit. The same is allowed in the following terms:

- i) Leave is hereby granted to the Applicant to file and serve its Memorandum of Appeal within ten (10) days from the date hereof.
- ii) An order of stay of execution of the decree in Ukwala PMCC No. E047 of 2024 is hereby granted pending determination of the intended appeal upon the Applicant furnishing a bank guarantee for the entire decretal sum from Family Bank Limited within the next fourteen (14) days from the date hereof failing which the stay shall lapse.
- iii) The costs of the application are awarded to the Respondent.

Dated and delivered at Siaya this 9th day of April 2026.

D. KEMEI

JUDGE

In the presence of :

M/s Wamunyu for M/s Ongonga....for Applicant.

Mbeka.....for Respondent.

Maurine.....Court Assistant.

SIAYA HC MISC. APPLICATION NO. E006 OF 2026 - RULING