

E006 of 2023 was delivered on 19th December, 2025 in favour of the Respondent for the sum of Kshs. 687, 830 being accrued rent arrears.

3. It was the Applicant's disposition that he had preferred an appeal and that he was apprehensive that the Respondent would move with speed to execute the judgment if a stay order was not granted.

4. The Applicant further deponed that the delay in filing the appeal within the stipulated time had been occasioned by the registry not providing typed proceedings in good time, despite numerous follow-ups, and they were only issued with the judgment on 29th January, 2026, after which they filed the Memorandum of Appeal.

5. It was the Applicant's averment that that the appeal raises significant issues of law with chances of success and that the application was filed without undue delay. The Applicant also averred that if the respondent were allowed to proceed with the execution, he would not be in a position to refund the amount. It was the Applicant's case that he would suffer substantial loss if orders of stay of execution are not granted. He also deponed that he was willing to provide security for costs and abide by any conditions directed by the court.

RESPONDENT'S RESPONSE

6. The Respondent filed his replying affidavit sworn on 3rd March, 2026, where he averred that the Application was an abuse of the court process as the Applicant was present when the judgment was delivered but afterwards failed to follow up with the court in getting the judgment on time. Further that the Applicant had not provided any plausible reason why he did not lodge the appeal on time or seek a stay of execution orders.

7. It was the Respondent's disposition that the judgment was delivered and uploaded to the system the same day, and further that a stay of execution cannot be granted if the Applicant has not lodged any appeal. That the Application was a ploy by the Applicant to deny the Respondent the enjoyment of the fruits of his judgment.

8. The Respondent also stated that the Applicant has not established that he will suffer substantial loss and further no security has been offered for the due performance of the decree. However, that if the court is inclined to

grant the stay orders, the Applicant should be ordered to deposit the entire decretal sum in court as security.

9. In conclusion, the Respondent urged the court to dismiss the application with costs.

APPLICANT'S SUBMISSIONS

10. Counsel for the Applicant filed his submissions and identified two issues for determination, whether the Applicant warrants the exercise of the court's discretion to file his Memorandum of Appeal out of time.
11. Mrs. Mbeche relied on the case of **Salat V Independent Electoral and Boundaries Commission & 7 others [2014] KESC 12 (KLR)** and submitted that the delay in filing the Memorandum of Appeal was based on the Applicant's counsel's inability to obtain a copy of the judgment despite a written request for a copy of the same as per the letter dated 22nd December 2025.
12. It was counsel's submission that the having obtained the judgment, the Applicant moved within reasonable time to seek the court's discretion.

Further that the Respondent will suffer no prejudice if the Applicant is allowed to file his Memorandum of Appeal out of time.

13. On the second issue, counsel relied on **Order 42 Rule 6** of the **Civil Procedure Rules** and the case of **Hamisi Juma Mbaya V Amekecho Mbaya [2018] eKLR, which** stipulated the three conditions to be satisfied before stay orders are granted.
14. On the first condition of substantial loss that an Applicant would suffer unless the orders are granted, counsel submitted that the Applicant stood to suffer substantial loss since the amount is substantial in nature and the Respondent has not shown that he is capable of repaying the said amount in the event the Appeal is successful, and cited the case of **Bonface Kariuki Wahome V Peter Nziki Nvamai & another [2019] eKLR.**
15. On the second condition of delay, counsel stated that the instant application was filed on 3rd February 2026, approximately 45 days after judgment was delivered, hence the same was brought without unreasonable delay.

16. On the final condition, counsel submitted that the Applicant was willing to furnish security for costs and abide by any other order of the court as a show of good faith and due performance of the decree. Counsel cited the case of **Focin Motorcycle Co. Limited V Ann Wambui Wangui & another [2018] eKLR.**

17. Mrs. Mbeche submitted that the intended appeal was not only arguable, but has a high chance of success, and relied on the case of **Cabinet Secretary Ministry of Health V Aura & 13 others (Civil Application E583 of 2023) [2024] KECA 2 (KLR).**

18. In conclusion, counsel submitted that the Applicant had met the threshold for grant of stay of execution pending the hearing and determination of the appeal and urged the court to allow the application as prayed.

ANALYSIS AND DETERMINATION

19. The issues for determination are whether the Applicant has met the threshold for grant of leave to file an Appeal out of time, and whether the court should grant the Applicant an order of stay of execution.

20. **Section 79G 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 the 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.”

21. The impugned judgment was delivered on 19th December, 2025 and that the Applicant had 30 days within which to file an appeal. The Applicant explained that the delay was occasioned by the court registry not availing the typed proceedings and certified judgment even after many follow-ups.

22. The court has the discretion to extend time, which ought to be exercised within the principles of the law. In the Court of Appeal case of **Omar Shurie V Marian Rashe Yafar (Civil Application No. 107 OF 2020)** UR the court held as follows:

“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.”

23. It is a fact that the time lapsed between the date of the judgment and the date of filing this application was approximately one month and one week. The delay can be termed as not inordinate as the Applicant has also explained why the Memorandum of Appeal was not filed in good time.

24. Similarly, in the case of Nicholas **Kiptoo Arap Korir Salat vs Independent Electoral and Boundaries Commission & 7 others (2013) eKLR** the Supreme Court laid down the guidelines for the determination of applications for extension of time to file an appeal as follows:

“(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 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 respondent of the extension is granted.

(6) Whether the application has been brought without undue delay; and

(7) Whether uncertain cases, like election petition, public interests should be a consideration for extending time.”

25. In the case of **County Executive of Kisumu vs County Government of Kisumu & others (2017) eKLR**, the Supreme Court held that:

“Each case has to be determined on its own merit and all relevant circumstances considered. It is worth reiterating that in considering whether or not to extend time the whole period of delay should be stated and explained to the satisfaction of the court.”

26. The Applicant has explained the period of the delay, which the court has considered and taking into account that the court has discretion either to allow or reject an application for extension of time to file an appeal out of time, which discretion must be exercised judiciously. I find that the application has merit and the Applicant is granted leave to file an Appeal out time.

27. On the issue of stay of execution, it would be an exercise in futility to grant leave to file an appeal out of time if the orders of stay are not granted. The Applicant has submitted on the threshold for the grant of a stay of execution and the court agrees that a stay of execution is to preserve the substratum of the case. However, the Applicant must file and

serve the Appeal and the Record of Appeal within 30 days from the date of this ruling. The status quo prevailing be maintained pending the hearing and determination of the Appeal.

28. The upshot of the foregoing is that the application dated 3rd February, 2026 is allowed in the following terms:

- a) The Applicant is granted leave to file an appeal out of time against the judgment in Nakuru BPRT E006 of 2023 delivered on 19th December, 2025.*
- b) The Applicant shall compile, file and serve a record of appeal within 30 days from the date of this ruling.*
- c) The status quo to be maintained pending the filing, hearing and determination of the intended Appeal.*
- d) The costs of this application shall abide the outcome of the appeal.*

**DATED, SIGNED AND DELIVERED AT NAKURU THIS 22ND
DAY OF APRIL 2026.**

**M. A. ODENY
JUDGE**