



**Karuri & another v Cheruyot (Miscellaneous Civil Application
E066 of 2025) [2026] KEHC 4358 (KLR) (31 March 2026) (Ruling)**

Neutral citation: [2026] KEHC 4358 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
MISCELLANEOUS CIVIL APPLICATION E066 OF 2025**

JK SERGON, J

MARCH 31, 2026

BETWEEN

PETER KAMAU KARURI 1ST APPLICANT

GEOFFREY KARANJA GITHAIGA 2ND APPLICANT

AND

BENARD CHERUYOT RESPONDENT

RULING

1. Before this Court is a Notice of Motion dated 21st October 2025. The same is expressed to be brought under Section 3A of the *Civil Procedure Act* (Cap 21), Orders 42 Rule 6, Order 50 Rule 5, Order 51 Rules 1 & 3, and Order 22 Rule 22 of the Civil Procedure Rules, 2010, and all other enabling provisions of the law.
2. The Applicants seek the following substantive orders:
 - (a) Spent.
 - (b) That the Applicants be granted leave to appeal out of time against the whole judgment of Hon. Japhet Bii (SRM) delivered on 17th October 2024 in Kericho Chief Magistrate's Civil Suit No. 326 of 2019;
 - (c) That the draft Memorandum of Appeal annexed to the application be deemed as duly filed and served upon payment of the requisite fees;
 - (d) That this Honourable Court be pleased to grant a stay of execution of the judgment in Kericho Chief Magistrate's Civil Suit No. 326 of 2019, pending the hearing and determination of this application inter partes;



- (e) That upon grant of prayers (b) and (c) above, this Honourable Court be pleased to order that the Applicants do provide sufficient security by depositing a sum of Kshs. 3,000,000/=, being the statutory limit, in court;
- (f) That costs of this application be in the cause.
3. The application is supported by the grounds set out on the face thereof and by the Supporting Affidavit of Geoffrey Karanja Githaiga, the 2nd Applicant, sworn on 21st October 2025.
4. The Applicants were the Defendants in Kericho Chief Magistrate's Civil Suit No. 326 of 2019. Judgment was delivered on 17th October 2024 in favour of the Respondent herein (the Plaintiff in the lower court) in the sum of Kshs. 2,809,310/= together with costs and interest.
5. According to the Applicants, their advocates on record were not present when the judgment was delivered, and no notice of entry of judgment was ever served upon them. They contend that they only became aware of the judgment when their advocates were subsequently served with the decree, the ruling on costs, and a notice of execution.
6. Being dissatisfied with the decision of the trial court, the Applicants now intend to appeal. However, the statutory period within which to file an appeal has since lapsed. They therefore seek leave to appeal out of time and, in the interim, a stay of execution to preserve the substratum of the intended appeal.
7. The following two principal issues arise for determination;
- (i) Whether the Applicants have made out a sufficient case for the grant of leave to appeal out of time; and
- (ii) Whether the Applicants have satisfied the conditions for the grant of a stay of execution pending appeal, particularly as set out under Order 42 Rule 6 of the Civil Procedure Rules.
8. The power to extend time for filing an appeal is discretionary. The Court of Appeal in *Thuita Mwangi v Kenya Airways Limited* [2003] eKLR held that the factors to be considered include;
- (a) The length of the delay;
- (b) The reason for the delay;
- (c) The chances of the intended appeal succeeding (the arguability of the appeal); and
- (d) The degree of prejudice to the respondent if the application is granted.
9. In the present case, judgment was delivered on 17th October 2024. This application was filed on 21st October 2025, approximately one year and four days after the judgment. Prima facie, this is a considerable delay. However, the Applicants have explained that the delay was not deliberate. They depose that their advocates were not present at the delivery of judgment, and no notice of entry of judgment was served upon them. They only came to know of the judgment upon being served with the decree and execution notices.
10. The Court notes that under Order 22 Rule 22 of the Civil Procedure Rules, a decree-holder is not obliged to serve a notice of entry of judgment before executing, but service of such notice is a common practice that may affect the computation of time for appeal where a party is not present at the delivery of judgment. The Applicants have also annexed correspondence and an affidavit of service showing that the Respondent purported to serve taxation documents via an email address that the Applicants contend does not belong to their advocates. This raises a plausible explanation for their lack of earlier knowledge.



11. Regarding the arguability of the intended appeal, the Applicants have annexed a draft Memorandum of Appeal. Without delving into the merits, the Court notes that the draft raises triable issues, including questions of liability, quantum, and possibly procedural irregularities. An intended appeal is not frivolous if it raises at least one arguable point.
12. On the issue of prejudice, the Respondent stands to suffer delay in realization of the fruits of the judgment. However, that prejudice can be ameliorated by an appropriate order for security, which the Applicants have expressly offered to provide.
13. Weighing all these factors, the Court finds that the Applicants have demonstrated sufficient cause for the grant of leave to appeal out of time. The delay, though lengthy, is reasonably explained, and the intended appeal is not without merit.
14. Order 42 Rule 6(2) of the Civil Procedure Rules sets out the conditions for the grant of a stay of execution pending appeal;
 - (a) The application must be made without unreasonable delay;
 - (b) The Applicant must demonstrate that substantial loss may result unless the stay is granted; and
 - (c) The Applicant must offer such security as the court may order for the due performance of the decree.
15. The Applicants contend that if the stay is not granted, the Respondent may proceed to execute the decree, and the intended appeal will be rendered nugatory. The judgment sum is Kshs. 2,809,310/=, a substantial amount. The Court is mindful that execution against the Applicants could involve attachment of property or garnishment of accounts, which would cause substantial hardship and potentially defeat the appeal if successful. The Applicants have therefore established the second condition.
16. The application was filed on 21st October 2025. This is within a reasonable time from the date the Applicants state they became aware of the judgment and execution process. The Court is satisfied that there has been no unreasonable delay.
17. The Applicants have unequivocally offered to deposit Kshs. 3,000,000/= in court as security. This sum is slightly above the decretal amount and would adequately safeguard the Respondent's interest should the appeal ultimately fail. The Court finds this offer reasonable and sufficient.
18. Consequently, the Applicants have satisfied all the prerequisites for a stay of execution pending appeal. The stay shall, however, be conditional upon the deposit of the security as proposed.
19. For the reasons set out above, this Court makes the following orders:
 - a. The Applicants are hereby granted leave of 14 days to appeal out of time against the judgment delivered on 17th October 2024 in Kericho Chief Magistrate's Civil Suit No. 326 of 2019.
 - b. An order for stay of execution of the judgment, decree, and all consequential orders in Kericho Chief Magistrate's Civil Suit No. 326 of 2019 is hereby granted pending the hearing and determination of the intended appeal, on condition that the Applicants deposit the sum of Kshs. 3,000,000/= (Kenya Shillings Three Million Only) in a joint interest-bearing account in the joint names of the advocates for the parties, within 30 days from the date of this ruling. In default of compliance with the condition in (b) above, the stay shall lapse automatically, and the Respondent shall be at liberty to proceed with execution.



c. Costs of this application shall be in the intended appeal.

DATED, SIGNED AND DELIVERED AT KERICHO THIS 31ST DAY OF MARCH, 2026

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J. K. SERGON

JUDGE

In the presence of:

C/Assistant – Rutoh

Miss Ongwacho for the Applicant

No Appearance for the Respondent

