

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT VOI

MISC. CIVIL APPLICATION NO. E048 OF 2025

**CORPORATE INSURANCE CO. LTD.....
APPLICANT**

=VERSUS=

SHIGHARE ASNATI ERINEST

**LEONARD MRAMBA MLWA (Suing on their own behalf and
on behalf of the Estate of the late JAMES KAZEMBE
MULWA).....RESPONDENT**

RULING

1. The application coming for consideration in this Ruling is the one dated 24th September 2025 brought under Article 159 of the Constitution of Kenya 2010, pursuant to Order 9 Rule 9, Order 51 Rule 1, of the Civil Procedure Rules 2010, Section 1A, 1B, 3A Section 79G and 95 of the Civil Procedure Act Cap 21 and all other enabling provisions in law seeking the following orders:-

- (i) That this application be certified as urgent and the same be dispensed off at first instance.**

- (ii) That pending the hearing of this application, the firm of LAWRENCE OBONYO LEGAL ADVOCATES may be appointed to be on record for the Plaintiff in place of M/S OMONDI WAWERU AND COMPANY ADVOCATES.**
- (iii) That the Applicants be granted leave to appeal out of time against the whole Judgement and Decree of the Honourable T. N. Sinkiyian, Principal Magistrate (PM) in Voi Magistrate's Court land Case No. E156 of 2021 SHIGHARE ASNATI ERINEST and another =Versus= CORPORATE INSURANCE COMPANY LIMITED pending the hearing and determination of this application inter parties.**
- (iv) That in the interim there be a stay of execution of the Judgement and Decree of Honourable T. N. Sinkiyian, Principal Magistrate (PM), in Voi Magistrate's Court Land Case No. E156 of 2021 SHIGHARE ASNATI ERINEST and another =Versus= CORPORATE INSURANCE COMPANY**

LIMITED pending the hearing and determination of this application inter parties.

(v) Upon inter parties hearing, there be a stay of execution of the Judgement and Decree of Honourable T. N. Sinkiyian, Principal Magistrate (PM), in Voi Magistrate's Court Land Case No. E156 of 2021 SHIGHARE ASNATI ERINEST and another =Versus= CORPORATE INSURANCE COMPANY LIMITED, pending the hearing and determination of the appeal.

(vi) That this Honourable Court be pleased to make such further and or other orders as it may deem just, fair, reasonable and appropriate in the circumstances in order for the ends of justice to be met.

2. The application is supported by the affidavit of **Anne Odongo** sworn in 24th September 2025 as follows:-

(i) That the Applicant is an insurance company, duly registered in the Republic of Kenya pursuant to the Insurance Act and I am the Legal Manager of the Applicant and have authority to Appear,

Swear and Sign Affidavits and to do all lawful acts which are required to be done in respect of this suit on behalf of the Plaintiff/Applicant, hence I am competent to swear this affidavit.

(ii) That I am aware that Judgement in this matter was delivered by Honourable T. N. Sinkiyian, Principal Magistrate (PM), in Voi Magistrate's Court Land Case No. E156 of 2021 SHIGHARE ASNATI ERINEST and another =Versus= CORPORATE ISNURANCE COMPANY LIMITED.

(iii) That by the time I could give out sufficient instructions to my advocate herein, the time allowed to file an appeal had run out.

(iv) That I am aggrieved and dissatisfied with the said Judgment, and I have now instructed my Advocates on record, to Appeal against the same.

(v) That my Advocates on record have requested the Honourable Court to furnish them with certified copies of the proceedings and Judgment to enable me to proceed with the intended Appeal.

- (vi) That I have been advised by my Advocate on record, which I verily believe to be true, that my Appeal against the said decision is a meritorious and arguable one with a good likelihood of success.**
- (vii) That I am equally informed by my advocates on record, which information I verily believe to be true that the time allowed to appeal under the Act has since lapsed but nevertheless this Court has the power to enlarge such time.**
- (viii) That I have an arguable appeal that raises serious triable issues with a high chance of success thus the need to allow for stay of execution pending the determination of the appeal on merit.**
- (ix) That I verily believe that the delay occasioned herein is not so inordinate as to be inexcusable and I humbly ask this Honourable Court to so find.**
- (x) That the Respondent herein will not suffer any prejudice if this application is allowed.**

(xi) That I swear this affidavit in support of the application annexed hereto for stay of execution pending hearing and determination of the appeal and for leave to lodge Memorandum of Appeal out of time and pray that the application be allowed in the interest of justice.

(xii) That in view of the foregoing, unless the application for stay is heard urgently, on a priority basis the Respondent threatens to levy execution against me, having been served with warrants for attachment, which will in effect render the appeal nugatory and I will suffer irreparable loss and damage.

3. The Respondent filed grounds of opposition as follows:-

(i) The application is an abuse of the process of the Court whose sole purpose is to delay the finalization of the case pending before the Magistrates Court.

(ii) The application lacks merit, incompetent and only brought to aid the Applicant to avoid

satisfying a legitimate judgement and decree of the Court.

(iii) There is no reason given why the Applicant delayed filing its Appeal despite having been granted a stay long enough and sufficient to have field their appeal.

(iv) The Respondent has already executed twice once in Mombasa where goods were proclaimed and removed and sold and was only able to raise Kshs. 37,000/= and currently execution in Nairobi is on going and it is when the Applicants have woken up a clear sign of indolence on its part.

(v) The Respondents have a legitimate judgement and as such they are entitled to execute a lawfully obtained judgement and should a stay be granted, it should be conditioned to depositing security, something the Applicant has not proposed to do.

(vi) That the exparte stay is apparently against the Respondent for reason that no obligation has been placed on the Applicant to safe guard the

interest of the Respondent in terms of security consummate with the decretal amount in the judgement.

(vii) From the sign of things, obtaining as at the time of attaching the Applicant at their Mombasa office, it would appear that the Applicant might not be able to raise the decretal amount should the Appeal being sort to be filed out of time goes against them and the need for security since it is possible that the Applicant is impecunious.

(viii) Interest of justice would require that security be ordered and given inline with the provisions of Order 42 Rule (6) (2) which is spelled out in mandatory terms and as such security pending appeal is needed in the circumstances.

(ix) The Respondent prays that the application for reason of lacking in merit should be dismissed with costs.

4. The parties filed written submissions as follows; The applicant, Corporate Insurance Company Limited, submitted

that it has filed a motion seeking leave to appeal out of time and a stay of execution pending appeal, following a judgment delivered on 4 July 2025 against which the appeal period of 30 days expired on or about 28 July 2025.

5. The applicant admits filing the application on 24 September 2025, approximately two months late, but argues that the delay should be excused because the judgment was delivered in the applicant's absence, and by the time the applicant became aware of the judgment, sufficient instructions could not be given to counsel before the appeal period lapsed.
6. Citing Section 79G of the Civil Procedure Act and case law such as **Charles Karanja Kiiu v Charles Githinji Muigwa and Edith Glichungu Koine v Stephen Njagi Thoithi**, the applicant submits that courts should consider the period and reasons for delay, prejudice to the respondent, and any issues of public importance, while also being guided by the overriding objective of just, expeditious, and proportionate resolution of disputes.
7. Relying on Articles 48 and 50(1) of the Constitution, the applicant argues that access to justice and the right to a fair

hearing require that the court be hesitant to shut a litigant out without a hearing, and that the present application is not an afterthought or an abuse of process.

8. On stay of execution, the applicant invokes Order 42 Rule 6 of the Civil Procedure Rules, claiming that substantial and irreversible loss will result if execution proceeds, specifically eviction from the applicant's only home, that the application was made without unreasonable delay given the circumstances, and that the applicant is willing to provide security as the court may order.
9. The applicant concludes that the court should grant both extension of time and stay of execution in the interests of substantive justice and proportionality.
10. The respondents oppose the applicant's motion for extension of time to file an appeal and for a stay of execution.
11. They argue first that the court lacks jurisdiction because no appeal has actually been filed; under Section 79G of the Civil Procedure Act, an applicant must file a memorandum of appeal, even out of time, before seeking extension or stay.

12. The respondents emphasize that the applicant must demonstrate good and sufficient cause for the delay, citing the well-established principles from **Thuita Mwangi v Kenya Airways Ltd and Leo Sila Mutiso v Rose Hellen Wangari Mwangi**, which require the court to consider the length of the delay, the reasons for it, the chances of the appeal succeeding, and any prejudice to the respondent.
13. They also rely on the Supreme Court decision in **Nicholas Kiptoo Arap Korir Salat v IEBC**, which holds that extension of time is an equitable remedy, not a right, and the applicant bears the burden of satisfying the court with a reasonable explanation for the delay, absence of undue delay, and consideration of prejudice to the respondent.
14. The respondents contend the applicant has failed to satisfy these conditions.
15. Regarding the stay of execution, they reiterate that no stay can be granted without an existing appeal, as Order 42 rule 6(1) of the Civil Procedure Rules presupposes an appeal has been filed. Moreover, they argue that even if the court is

inclined to grant a stay, the applicant must provide security for the due performance of the decree.

16. Citing **Gianfranco Manenthi & Another v Africa Merchant Assurance Company Limited**, they note that security is essential, especially for money decrees, to ensure the successful litigant is not denied the fruits of judgment if the appeal fails.
17. They refer to **Arun C. Shuma v Ashana Raikundalia**, where it was held that a judgment is like a debt, and security must be capable of guaranteeing performance of the decree.
18. The respondents submit that the proper balance is to grant a stay only if the entire decretal amount is deposited as security, creating a win-win situation where the applicant can pursue the appeal while the respondent's right to enjoy the judgment is protected.
19. In conclusion, they urge the court to dismiss the application for lack of jurisdiction and failure to meet the required conditions, or alternatively to impose a condition that the full decretal sum be deposited as security, with costs awarded to the respondents.

20. The Applicant, Corporate Insurance Company Limited, seeks two primary remedies from this court: firstly, leave to appeal out of time against the judgment delivered on 4th July 2025 in Voi Magistrate's Court Land Case No. E156 of 2021 and secondly, an order for stay of execution of the said judgment and decree pending the hearing and determination of the intended appeal.

21. The issues for determination in the application dated are as follows;

- (i) Whether the Applicant has made out a sufficient case for the grant of leave to file an appeal out of time, and**
- (ii) Whether the Applicant has met the threshold for the grant of an order for stay of execution pending appeal.**

22. Turning to the first issue regarding the extension of time to appeal, the governing statutory provision is Section 79G of the Civil Procedure Act, Cap 21, which mandates that 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.

23. The proviso to this section, however, grants this court the discretion to admit an appeal out of time if the appellant satisfies the court that he or she had good and sufficient cause for not filing the appeal in time.
24. The Supreme Court of Kenya, in the case of **Nicholas Kiptoo Arap Korir Salat v Independent Electoral and Boundaries Commission & 7 others [2014] eKLR**, rendered a comprehensive framework for the exercise of this discretion, holding that extension of time is not a right of a party but an equitable remedy available only to a deserving party at the discretion of the court.
25. The Court established that the party seeking extension has the burden of laying a basis to the satisfaction of the court, that there must be a reasonable reason for the delay explained to the satisfaction of the court, that the court will consider whether there will be any prejudice suffered by the respondents if the extension is granted, that the application must have been brought without undue delay, and that in certain cases public interest should be a consideration for extending time.

26. The Court of Appeal in **Thuita Mwangi v Kenya Airways Ltd [2003] eKLR** also enumerated the factors to be considered, including the length of the delay, the reason for the delay, the chances of the appeal succeeding, and the prejudice to the respondent.

27. In the instant application, the impugned judgment was delivered on 4th July 2025.

28. Consequently, the thirty-day window for lodging an appeal computed from that date expired on or about 28th July 2025.

29. The Applicant concedes that it filed the present application on 24th September 2025, which is approximately two months after the prescribed period had lapsed.

30. This delay, while not inordinately lengthy when measured against some precedents, nevertheless requires a credible and plausible explanation.

31. The reason proffered by the Applicant, through the affidavit of Anne Odongo, the Legal Manager, is that judgment was delivered in the Applicant's absence and that by the time sufficient instructions could be given to counsel, the time allowed for filing the appeal had already run out.

32. This explanation is, with respect, rather terse and lacking in detail. The affidavit does not disclose the specific date upon which the Applicant became aware of the judgment, what steps were taken between the date of judgment and the date of filing the application to pursue the matter, or why instructions to appeal could not have been procured within the thirty-day statutory period.
33. The delay of approximately two months, while not trivial, is not so inordinately prolonged as to be incapable of remedy.
34. The Respondent has argued that they will suffer prejudice if the extension is granted, as they have a legitimate judgment in their favour and have already commenced execution proceedings in Mombasa and Nairobi.
35. This argument, however, goes more to the issue of stay of execution rather than to the grant of leave to appeal out of time.
36. Prejudice to a respondent can often be assuaged by an award of costs or by conditions attached to the grant of leave.
37. On balance, and in the overriding interest of substantive justice, I am persuaded that the Applicant should be granted

an opportunity to prosecute its intended appeal, as shutting it out entirely would be a draconian measure.

38.The right to be heard is a cornerstone of our justice system, and where a litigant has demonstrated a desire to appeal and the delay is not egregious, the court ought to lean in favour of granting leave.

39.I therefore find that the Applicant has made out a sufficient case for the grant of leave to appeal out of time.

40.I now turn to the second issue, which pertains to the prayer for stay of execution pending the hearing and determination of the intended appeal.

41.This prayer is governed by Order 42 Rule 6 of the Civil Procedure Rules, 2010, which provides that no order for stay of execution shall be made unless the court is satisfied that substantial loss may result to the applicant unless the order is made, the application has been made without unreasonable delay, and such security as the court orders for the due performance of the decree has been given by the applicant.

42.It is trite law that stay of execution pending appeal is a discretionary power of the court that must be exercised

judiciously, and the burden rests squarely on the applicant to satisfy all three conditions concurrently.

43. The Court of Appeal in **Butt v Rent Restriction Tribunal [1982] KLR 417** held that the power to grant a stay is discretionary and should be exercised in such a way as not to prevent an appeal, but a judge should not refuse a stay if there are good grounds for granting it merely because in his opinion a better remedy may become available to the applicant at the end of the proceedings.

44. The first condition requires the Applicant to demonstrate that substantial loss will result if the stay is not granted.

45. The Applicant contends that unless a stay is granted, the Respondent will levy execution against its property, including its only home, which will render the appeal nugatory.

46. However, the Applicant is not an individual natural person but a registered insurance company, which is a corporate entity with substantial operations.

47. The mere fact of execution, without more, does not automatically constitute substantial loss. The Applicant has not placed before this court any concrete evidence to

demonstrate that it is impecunious or that the Respondent is a man of straw who would be unable to refund the decretal sum should the appeal ultimately succeed.

48. The Respondent, on the other hand, has raised a credible concern that the Applicant might be impecunious, noting that previous execution in Mombasa yielded only Kshs. 37,000/=.

49. While this assertion is not conclusive, it calls into question the Applicant's financial standing and underscores the necessity for a robust security order.

50. The second condition requires that the application has been made without unreasonable delay.

51. As established earlier, the judgment was delivered on 4th July 2025, and this application, which includes the prayer for stay, was filed on 24th September 2025.

52. The applicant has been granted leave to appeal out of time.

53. The third condition, and perhaps the most critical in this case, is the provision of security for the due performance of the decree.

54. Order 42 Rule 6(2)(b) is couched in mandatory terms, stating that no order for stay shall be made unless such security as

the court orders for the due performance of such decree or order has been given by the applicant.

55. The purpose of security is to ensure that the successful litigant, who has obtained a lawful judgment in their favour, is not denied the fruits of that judgment in the event the appeal fails.

56. The Applicant stated, in rather general terms, that it is willing to provide security as the court may order.

57. However, no specific proposal was made regarding the nature or quantum of that security.

58. The Respondents have urged this court to order that the entire decretal amount be deposited in a joint interest-earning account as a condition for stay.

59. This is a common and prudent condition in such applications, as it preserves the subject matter of the appeal and ensures that regardless of the outcome, the party entitled to the funds will have access to them.

60. The decretal sum was not explicitly stated in the application or the submissions, but it is clearly a money decree. The Applicant, being an insurance company, ought to be in a position to furnish security.

61. Having carefully weighed the competing interests, on one hand, the Applicant's right to pursue its appeal without the threat of execution that could potentially render the appeal nugatory, and on the other hand, the Respondent's right to enjoy the fruits of a judgment lawfully obtained after a full trial, I am of the considered view that a conditional stay of execution is the most appropriate and just order.

62. The Applicant has not made out a compelling case that it will suffer irreparable substantial loss, given its nature as a corporate entity.

63. However, to completely deny a stay would be to potentially render the appeal, which I have already granted leave to file, an academic exercise if execution is levied and completed. The balance of convenience tilts in favour of granting a stay, but only upon stringent conditions that safeguard the Respondent's interest.

64. Consequently, I make the following final orders;

(i) First, the application for leave to appeal out of time is hereby allowed.

(ii) The same shall be filed and served within fourteen (14) days from the date hereof.

- (iii) Second, there shall be a stay of execution of the said judgment and decree pending the hearing and determination of the intended appeal.**
- (iv) This stay is granted strictly on the condition that within thirty (30) days from the date of this ruling, the Applicant shall deposit the entire decretal sum into a joint interest-earning account in the names of the advocates for the Applicant and the advocates for the Respondent, or in an account in a reputable bank to be agreed upon by both parties, or deposit the entire sum in this court.**
- (v) In default of the fulfillment of this condition within the stipulated thirty (30) days, the order for stay of execution shall automatically lapse, and the Respondent shall be at liberty to proceed with execution.**

65. For the avoidance of doubt, the Respondent is awarded costs of this application, which shall be borne by the Applicant in any event.

66. Orders to issue accordingly.

Dated, signed and delivered this 30th day of April 2026 in open court at Voi High Court.

**ASENATH ONGERI
JUDGE**

In the presence of:-

Court Assistant: Millicent

.....**for the Applicant**

.....**for the Respondents**

ORIGINAL