

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR
RELATIONS COURT AT NAKURU
MISCELLANEOUS APPLICATION NUMBER E062 OF 2025**

BETWEEN

1. LILIAN IRIGU RUGU [sued as the legal administrator of the estate of Paul Rogo Itotia, deceased}
2. NEWTON RUGU
3. ISAAC RUGU APPLICANTS

VERSUS

LUKA OMUCHIRO KARACHI alias LUKA MANOARESPONDENT

RULING

1. The Applicants filed an application dated 4h November 2025.
2. They concurrently pray for orders of stay of execution of judgment /decree of the Trial Court; and an order for leave to file an appeal out of time.
3. Judgment of the Trial Court was delivered on 1st July 2025.
4. They claim that they were not supplied information by the Court and their previous Advocates, concerning their case before the Trial Court, and there was delay in accessing proceedings from the Trial Court.
5. They allege that the Trial Court Magistrate kept the court file in his chambers, and they had no option but to wait.

6. They submit that the decree is for the sum of Kshs. 5,446,303.18, which they state, the Respondent would not be able to refund, in event their appeal succeeds.
7. The application is supported by the affidavit of the 3rd Applicant, sworn on 4th November 2025.
8. It is opposed through the replying affidavit of the Respondent, sworn on 1st December 2025.
9. The Respondent submits that the Applicants filed an application dated 9th September 2025 before the Trial Court, seeking review of Judgment. They were aware of the Judgment delivered on 1st July 2025.
10. They were represented by the Law Firm of Imbwaga Yogo & Partners Advocates until 14th July 2024, when the said Advocates were discharged from the proceedings. The Applicants hence acted in person, and were in constant touch with the Respondent's Advocates.
11. The 2nd Applicant was in Court on 11th February 2025 where the Applicants' case was heard, closed and scheduled for the last mention to confirm filing and service of submissions. The 2nd Applicant was in phone communication with the Respondent's Advocates, and was aware about delivery of Judgment.

12. They have not supplied the Court with evidence showing that they applied for proceedings. They were not mapped in the Trial Court case, and cannot therefore claim that Judgment had not been uploaded. They do not disclose if they applied for the judgment and proceedings in the physical file, in the absence of the e-file.
13. The Respondent states that the Applicants met his Advocate on 29th July 2025, when they agreed on the mode of settling decree. The Respondent commenced execution only after the Applicants reneged on settlement.
14. The Parties agreed on 24th February 2026, to have the application determined on the strength of their affidavits.

The Court Finds: -

15. Evidence on record shows that the Applicants were not denied the opportunity to be heard at the Trial Court, either in person, or through the representation of their Advocate.
16. They had notice of appearances before the Trial Court at various stages, but opted to keep away. They were in close contact with the Respondent's Advocate, and were kept abreast of the proceedings, through SMS communication. The Applicants filed an application for

review of Judgment of the Trial Court, dated 9th September 2025. They cannot claim that they did not know about delivery of the Judgment.

17. There is evidence also, that the Applicants met the Respondent's Advocates, and agreed on settlement of the decree of the Trial Court.
18. They reneged on settlement, and then turned to Court for assistance, when the Respondent sought to execute decree.
19. The application has no merit. The facts do not support the position taken by the Applicants.
20. The law likewise, does not aid their application. The application seeks orders of stay of execution, even before the application for leave to appeal out of time, has been considered.
21. In Supreme Court decision, **Kiptoo Korir Arap Salat v. Independent Electoral and Boundaries Commission and 7 Others [2014] e-KLR**, it was held that where the law prescribes for time within which something ought to be done, if that time lapses, one needs first to seek extension of time before he can proceed to do that which the law requires.
22. In **Muriithi Wanjao t/a Wanjau & Wanjao Advocates v. Samuel Mundati Gatabaki & Another [2016] e-KLR**, the Court explained that an omnibus application is incapable of proper adjudication by the Court, for each of

the reliefs sought, apart from being governed by different rules, is also subject to long-established and different judicial principles.

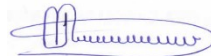
23. In the view of the Court, the Applicants ought to first have brought an application for leave to appeal out of time.
24. Once leave was granted, upon the Applicants establishing rules and judicial principles governing leave to appeal out of time, they would then file their application for stay of execution, to be considered on rules and judicial principles, applicable to stay of execution.
25. The Court would be in a position to properly adjudicate the application for stay of execution, examining whether the rules and judicial principles governing orders of stay of execution, have been met.
26. It is impossible without the draft Memorandum of Appeal for instance, to know what are the grounds of the intended appeal; and whether the appeal is arguable, with high chances of success.
27. The application filed by the Applicants dated 4th November 2025 has no merit.
28. ***It is dismissed with costs to the Respondent.***

29. *The ruling and orders herein shall apply to Nakuru E&LRC Miscellaneous Application No. E061 of 2025 between the Applicants herein and Salphine Ayuma Kariuki; and Nakuru E&LRC Miscellaneous Application No. E063 of 2025, between the Applicants herein and Faith Wathoni Njoroge.*

Dated, signed and issued electronically at Nakuru, this 30th day of April 2026.

James Rika

Judge

A handwritten signature in blue ink, appearing to read 'James Rika', enclosed within a light blue oval border.