



REPUBLIC OF KENYA



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Multiplex Enterprises Limited v Pride Kings Services Limited & 2 others (Civil Miscellaneous Application E010 of 2026) [2026] KEHC 5249 (KLR) (24 April 2026) (Ruling)

Neutral citation: [2026] KEHC 5249 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
CIVIL MISCELLANEOUS APPLICATION E010 OF 2026**

A MABEYA, J

APRIL 24, 2026

BETWEEN

MULTIPLIX ENTERPRISES LIMITED APPLICANT

AND

PRIDE KINGS SERVICES LIMITED 1ST RESPONDENT

HEATH CONSULT AUCTIONEERS 2ND RESPONDENT

SPARKNET AUCTIONEERS SERVICES 3RD RESPONDENT

RULING

1. This is a ruling on the application by Multiplex Enterprises Limited, ('the applicant') dated 3/2/2026. The Motion was brought under Order 42 Rule 3, 6, 27, Order 51 Rule 1 of the Civil Procedure Rules, 2010 sections 1A, 1B, 3A, 3B, 79G and 95 of the [Civil Procedure Act](#)
2. The applicant sought several orders; to wit, leave to file the Memorandum dated 4/2/2026 out of time against the decision of the KSM SCCCOMM No. E293 of 2023 between the parties herein delivered on 22/8/2023, a temporary stay of that decree pending the determination of the pending appeal, an injunction to restrain the respondents from selling LR No. Uholo/Rambulu/1240 pending the determination of this application. There was also another prayer for leave to file an appeal out of time against the aforesaid decree.
3. The grounds for the application were set out in the body of the Motion and the supporting affidavit of Dennis Oduor Aduor sworn on 3/2/2026. These were, inter alia, that judgment for Kshs.426,000/- was entered on 22/8/2023 together with exorbitant costs of Kshs.250,000/-; an application by the applicant to pay by instalment was declined; that the applicant's corporate veil was pierced and the applicant's director was directed to deposit his title LR No. Uholo/Rambulu/1240 ('the said property') in court, that the respondents had now proceeded to advertise that property for sale which was valued over Kshs.50m; that the previous advocate on record was instructed to lodge an appeal in



time but failed to do so; that the delay in filing the appeal was not deliberate but was due to a mistake of counsel which should not be visited upon the applicant; that the appeal raises serious triable issues and if no stay is granted the applicant will suffer substantial loss and prejudice.

4. The application was opposed vide a replying affidavit of Fredrick Okello Mashuke sworn on 9/2/2026. He deposed that the application was incompetent, frivolous and misconceived. It was a fishing expedition as the applicant had used all way possible to evade settling the decretal sum. That its properties had been attached but the applicant applied to pay by instalments. The payment by instalments was allowed but the applicant reneged on it.
5. That when the respondent instructed the auctioneers to go and re-attach, the properties were found missing thereby prompting the respondent to apply for a Notice to Show Cause. That since no properties were found, the respondents went straight to lift the corporate veil whereby the applicant's director appeared in court and pleaded for leniency as he was serving jail term in another matter and gave his title as security and was given 90 days to settle in default the same be sold.
6. That he failed to settle and filed in this Court Civil Case No. E026 of 2025 for stay of execution which was denied. That the applicant has always been in Court but has never talked of being involved in an accident or being hospitalized as is now alleged.
7. The application was argued orally. Mr. Odera, Learned Counsel for the applicant submitted that the property that was at risk belonged to the director of the applicant as his matrimonial home. That the title that was in danger of being disposed off belonged to the director of the applicant and was willing to deposit the equivalent sum in Court to preserve the appeal. That there were no proceedings in HCC No. E026 of 2025 that had been annexed to prove the assertions in the replying affidavit. He urged that the application be allowed.
8. Ms. Atieno, Learned Counsel for the respondent submitted that for leave to appeal, there are three (3) requirements that must be established. The applicant must show that there is no inordinate delay, the delay must be explained and the prejudice, if any, to be suffered by the opposite party has to be considered.
9. That on the first requirement, there was inordinate delay as judgment was made on 23/8/2023 yet the present application was made on 3/2/2026. That the reason given was that the applicant's director was involved in an accident. That the said explanation was not sufficient as the said director was only admitted for 2 days and thereafter attended Court many times thereafter. That the respondent will be prejudiced as its judgment would have taken 3 years since it was pronounced.
10. On stay, Ms. Atieno submitted that the appeal was not arguable. That there was nothing to show that the applicant will suffer substantial loss. That no security had been offered and, in any event, the judgment itself had not been appealed against.
11. In rejoinder, Mr. Odera submitted that any prejudice to be suffered by the respondent could be atoned by an order for costs.
12. I have considered the rival contestations of the parties. This is an application for leave to appeal against the judgment of the SCC made on 22/8/2023 and in the meantime, for stay thereof pending appeal.
13. As properly submitted by Ms. Atieno, in an application for leave to appeal out of time, the Court has to consider the delay, the reasons for the delay and the possible prejudice to be suffered by the opposite party. On the other hand, in an application for stay, the applicant must show that he will suffer substantial loss if stay is not granted, he must offer security and that the application must be



made timeously. (See the decision of the SCK in Nichalas Kiptoo Arap Korir Salat vs IEBC & 7 Others (2014) eKLR and Butt vs Rent Restriction Tribunal 1979.

14. On delay, the judgment sought to be appealed against was made on 22/8/2023. That is over two years ago. The appeal was supposed to be lodged on or about the 21/9/2023. The present application was lodged on 4/2/2026, two years and five months later. There was inordinate delay.
15. What reasons were offered for the delay? These were two fold; that the director of the applicant was involved in an accident and was admitted in hospital. Secondly, that it was the mistake of the previous advocates of the applicant who had instructions to file the appeal but failed to do so. That the mistake of that advocate should not be visited upon the applicant.
16. As regards the accident of the applicant's director, the respondent contended that the admission to hospital was only for two days. That there was no explanation as to what the applicant did after the discharge from hospital. That the said director was thereafter in Court severally fighting the execution proceedings.
17. On the part of this Court, is agrees with the respondent that, the accident occurred and the director of the applicant was shortly admitted in hospital. The applicant did not explain what happened between the time the said director was discharged from hospital until 4/2/2026 when it came to Court. An applicant for such an application must give satisfactory explanation for the period of the delay. In the present application, the applicant did not and the Court holds that there was no evidence to show that the alleged accident caused the delay between August, 2023 and February, 2026.
18. The second reason advanced was that it was the mistake of the previous advocate who failed to file the appeal despite instructions to that effect. This reason was neither denied nor addressed by the respondent. Had it been, the Court would have expected more than just a sweeping allegation against an advocate who has since ceased to be on record. The Court would have required that there be evidence of service of the application upon such advocate for him to respond. If such advocate files an affidavit denying the fact, then the evidentiary burden would have shifted and rested with applicant. If the advocate fails to file a rejoinder, then the allegations would be taken to the truth. This is so because, such an allegation is very serious as it can amount to professional misconduct on the part of an advocate with the attendant ramifications.
19. In the present case however, the respondent did not challenge this fact. It is a well-known principle of law that an advocate's mistake should not be visited upon a litigant. (See Kariuki vs Wangeci & 7 Others (2024) KECA 1692 (KILR)). That being the case, this Court is of the opinion and holds that the alleged mistake of the advocate should not be visited upon the applicant. The delay was therefore explained.
20. On prejudice, while the Court agrees that any further delay in the execution of the decree will prejudice the respondent, such prejudice can be compensated by an award of costs and interest.
21. On stay, substantial loss was not proved. The Court takes cognizance of the fact that, what is on the line of fire is the home of the applicant's director. However, the order to attach that property was not as against the applicant. It is that director who should have challenged that order. He is the only one with the locus to challenge the attachment of his property if he was not a party in the proceedings. The Notice to Show Cause proceedings are not before this Court to show whether they were properly conducted. In the ruling arising from the said proceedings and dated 29/10/2024, there is no reasons given as to why the applicant's director was to be held liable.
22. On the other hand, however, the Court has looked at the replying affidavit of the respondent. Nowhere it has been indicated that if the decretal sum is paid over to it, it would be able to refund the same were the appeal to succeed.



23. On security, none was offered. However, since an application for stay is in the discretion of the Court, the Court is entitled to look at other issues like the chances of the appeal succeeding. One of the grounds of appeal is that the costs of Kshs.250,000/- awarded on a claim of Kshs.426,000/-. That is not only exorbitant but outrageous. This Court doubts whether it is just to subject a party to costs that are in excess of half of a claim. That pricks the conscience of the Court and the Court cannot turn a blind eye to it. Security should be ordered.
24. In the premises, the application is allowed in the following terms: -
- a. Leave is granted to the applicant to appeal against the Judgment of the Small Claims Court of 22/8/2023 in Kisumu SCCOMM No. E293 of 2023 out of time.
 - b. The Memorandum of Appeal be filed and served within 7 days of this ruling, in default, the leave shall lapse.
 - c. In the meantime, there shall be a stay of execution of the Judgment of the Small Claims Court dated 22/8/2023 in KSM SCCOMM No. E293 of 2023 pending the hearing and determination of the appeal on condition that the applicant deposits in an interest earning account in the joint names of the advocate for the parties herein the decretal sum as ordered on 10/2/2026.
 - d. The respondent shall have the costs of the application in any event.
- It is so ordered.

DATED AND DELIVERED AT KISUMU THIS 24TH DAY OF APRIL, 2026.

A. MABEYA, FCI Arb

JUDGE

