

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MILIMANI**  
**COMMERCIAL AND TAX DIVISION**  
**HCCOMM NO. E597 OF 2025**

**MASAVA LIMITED.....1<sup>ST</sup>**  
**PLAINTIFFS/APPLICANT**

**ISSACK ABDULLAHI IBRAHIM.....2<sup>ND</sup>**  
**PLAINTIFF/APPLICANT**

**-VERSUS-**

**MIDDLE EAST BANK LIMITED.....1<sup>ST</sup>**  
**DEFENDANT/RESPONDENT**

**GARAM INVESTMENTS AUCTIONEERS.....2<sup>ND</sup>**  
**DEFENDANT/RESPONDENT**

**RULING**

**Introduction**

1. The Application before this Court is a Notice of Motion dated 16th April 2026. It is brought primarily under Order 40 Rule 1 and Order 50 Rule 6 of the Civil Procedure Rules 2010, alongside Sections 1A, 1B, 3A, 63, and 95 of the Civil Procedure Act, Cap 21. The Applicants seek an extension of time to deposit a security sum of Kshs. 50,000,000.00 by installments.

2. The genesis of this request lies in a Court Order issued on 25th September 2025, where interim orders restraining the Defendants from selling properties LR No. 209/10731, LR No. 209/10732, and LR No. 209/10548/147 were extended. This extension was conditional upon the Plaintiffs depositing Kshs. 50,000,000.00 into Court within fourteen (14) days. On 9th April 2026, the Court further enlarged the time for this deposit by seven (7) days.
3. The Applicants contend that they have demonstrated substantial compliance by remitting Kshs. 40,000,000.00 to their Advocates' account. However, they encountered a technical administrative hurdle: the Judiciary's electronic payment platform had generated a single invoice (**No. E4LHPM9F**) for the full **Kshs. 50,000,000.00**, making it impossible to process a partial payment of Kshs. 40,000,000.00.
4. According to the Applicant, the Registry advised that a formal court order is required to split the invoice. Consequently, the Applicants seek to pay the **Kshs. 40,000,000.00** forthwith, and the balance of Kshs. 10,000,000.00 within fourteen (14) days.

## **Analysis and Determination**

5. The Court's power to extend time under Section 95 of the Civil Procedure Act and Order 50 Rule 6 of the Civil Procedure Rules is discretionary. In exercising this discretion, the Court must be guided by the principles of equity and the need for the expeditious disposal of cases as anchored in the "Oxygen Principles" under Sections 1A and 1B of the Act.
6. In ***Nicholas Kiptoo Arap Korir Salat v Independent Electoral and Boundaries Commission & 7 others [2014] eKLR***, the Supreme Court established that:
- i. Extension of time is not a right but a matter of judicial discretion.
  - ii. The applicant must provide a plausible explanation for the delay.
  - iii. The court must consider whether the extension will cause prejudice to the respondent.
7. In the present case, the requirement for security has been in force for over six months. The Court already granted a "last chance" extension on 9th April 2026. By the Applicants' own admission, they do not currently possess the full sum of Kshs. 50,000,000.00. To grant a further extension for the balance would be to vary a fundamental **condition of the injunction, which the Applicants have failed to meet for a protracted period.**

- 8. Orders of the Court are not mere suggestions; they are to be complied with strictly. The technicality** regarding the invoicing system only arises because the Applicants have failed to produce the full amount as ordered. The Court cannot continue to shift the goalposts to accommodate the Applicants' financial constraints at the expense of the Respondents' right to realize their security.
9. Consequently, the prayer to split the invoice and the prayer for a fourteen (14) day extension for the balance are both declined.
10. However, taking into account the "Oxygen Principles" under Sections 1A and 1B of the Civil Procedure Act, and the Applicants' assertion that a substantial portion of the funds is available, the Court will grant one final, very brief window for the full condition to be met, provided the status quo of the security remains.
11. Accordingly, the Court issues the following orders:
- i. The Notice of Motion dated 16th April 2026 is hereby declined.
  - ii. Notwithstanding the dismissal of the application, and as a final indulgence, the Plaintiffs are granted a window to deposit the entire security sum of Kshs.

50,000,000.00 in a single installment **by no later than Tuesday, 21st April 2026.**

- iii. The window granted in Order (ii) above shall only be applicable where the Respondents have not already moved to realize the security (the suit properties) following the lapse of the previous extension.
  - iv. If the full sum of Kshs. 50,000,000.00 is not deposited by the close of business on 21st April 2026, the interim orders staying the sale of LR No. 209/10731, LR No. 209/10732, and LR No. 209/10548/147 shall stand vacated without further reference to this Court.
  - v. Costs of this application to be in the cause.
12. It is so ordered.

**DATED, SIGNED, AND DELIVERED AT NAIROBI  
THIS 18<sup>TH</sup> DAY OF APRIL 2026**



**HON. MR. JUSTICE MOSES ADO**  
*Judge of the High Court*