



Okinyi v Muraga & another (Suing as Legal Representatives of the Estate of Stephen Kimari Muraga - Deceased) (Miscellaneous Civil Application E051 of 2024) [2026] KEHC 5891 (KLR) (30 April 2026) (Ruling)

Neutral citation: [2026] KEHC 5891 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT THIKA
MISCELLANEOUS CIVIL APPLICATION E051 OF 2024
FN MUCHEMI, J
APRIL 30, 2026**

BETWEEN

BRIAN MANOTI OKINYI APPLICANT

AND

DAVID MURAGA 1ST RESPONDENT

GRACE WAMBUI WAITHIRA 2ND RESPONDENT

**SUING AS LEGAL REPRESENTATIVES OF THE ESTATE OF STEPHEN
KIMARI MURAGA - DECEASED**

RULING

Brief facts

1. The application dated 30th April 2024 seeks for orders of leave to file an appeal out of time against the judgment in Ruiru CM Court Civil Case No. E133 of 2023 delivered on 14th February 2024. The applicant further seeks for orders of stay of execution of the said judgment pending the hearing and determination of the intended appeal.
2. The respondents opposed the application and filed a Replying Affidavit dated 6th November 2024.

Applicant's Case

3. The applicant states that judgment in the lower court was delivered on 14th February 2024 finding him 90% liable and awarded the respondents damages for pain and suffering at Kshs. 30,000/-, loss of expectation of life at Kshs. 100,000/-, loss of expectation of life at Kshs. 3,500,000/- and special damages at Kshs. 52,150/-. Being dissatisfied with the judgment, the applicant intends to lodge an appeal but the time within which one can lodge an appeal has lapsed. The applicant further states



that the 30 days stay of execution granted in the matter has since lapsed and unless stay of execution is granted, his intended appeal will be rendered nugatory.

4. The applicant avers that upon delivery of judgment, his counsel sought to obtain a copy of the judgment but his efforts were defeated. The applicant states that the said application has been brought promptly and without unreasonable delay.
5. The applicant states that the decree is for a substantial sum of money and if paid to the respondents, he is apprehensive that he will not be able to recover the whole sum.

The Respondents' Case

6. The respondents state that they learnt of the current application when the court registry wrote to their advocates informing them that the matter will be mentioned on 2nd December 2024. The respondents state that they have never been served with the application and further the matter has been in court since 30th April 2024 and has been mentioned four (4) times in their absence. This is on 4/6/2024, 24/7/2024, 9/9/2024 and 28/10/2024 without the respondents being served.
7. The respondents aver that the application is misconceived, incompetent and an abuse of the court process. The respondents state that judgment was delivered on 14th February 2024 in the presence of both advocates and the lower court granted 30 days stay of execution which has since lapsed.
8. The respondents argue that the instant application is a strategy to frustrate them from enjoying the fruits of the judgment. Further, the applicant has not given any good or sufficient cause for the delay in filing his appeal within the time provided under section 79G of the *Civil Procedure Act*. The respondents state that the applicant has not demonstrated any substantial loss that he would incur if execution were to proceed whereas they stand to suffer loss and damage as the judgment award would remain unsatisfied to their detriment.
9. The respondents state that the applicant has not offered any security for the due performance of the decree of the lower court and the proposal to provide reasonable security is not sufficient herein.
10. The respondents argue that the award by the lower court is within range as the court applied correct principles while arriving at the award taking into account the age of the deceased and the dependents who relied on the deceased.
11. The respondents state that the 2nd respondent is a successful businesswoman capable of refunding the decretal sum in the event the applicant's intended appeal succeeds. The respondents further state that should the court be inclined to grant the orders sought, the applicant should be ordered to pay half the decretal sum of Kshs. 1,748,991.50/- to the respondent and deposit the balance in court.
12. Parties elected not to put in written submissions however the respondents filed written submissions.

The Respondents' Submissions

13. The respondent relies on the case of Samvir Trustee Limited Nairobi (Milimani) HCCC 795 of 1997 and submits that they are suffering immense prejudice as the damages awarded arose out of fatal injuries sustained by their son on 1st January 2023 and judgment was delivered on 14th February 2024 and they have been kept out of reach of the monies properly and justly due to them. The respondents further submit that the decretal sum is outstanding and the applicant has not made any proposals towards the settlement of the same nor has he proposed to provide any security. The applicant was only awoken from the slumber by the execution of the judgment.



14. The respondents rely on Section 79G of the *Civil Procedure Act* and the cases of Paul Musili Wambua vs Attorney General & 2 Others [2015] eKLR and Nicholas Kiptoo arap Korir Salat vs Independent Electoral and Boundaries Commission & 7 Others (no citation given) and submit that the applicant has attributed delay in filing the appeal on the client who delayed to issue instructions upon being presented with a copy of the judgment. The applicant did not state when they applied for the copy of the judgment, delays in acquiring the same, when it was acquired and shared with the client and when instructions were received. Thus the applicant has not laid any basis why extension should be granted. The respondents further rely on the cases of Alibhai Musajee vs Sharrif Mohammed Al-Bet Civil Appeal No. 283 of 1998 and Velji Shahmad vs Shamji Bros. & Papatlal Karman & Co. [1957] EA 438 and submits that extension of time is not a right of a party but is only available to a deserving party and the discretion of the court.

The Law

Whether the court should exercise its discretion to grant the applicant leave to file his appeal out of time;

15. Section 79G of the *Civil Procedure Act* states:-

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, excluding from such period any time which the lower court may certify as having been requisite for the preparation and delivery of a copy of the decree or order:

Provided that an appeal may be admitted out of time if the appellant satisfies the court that he had good and sufficient cause for not filing the appeal in time.

16. It is clear from the wording of section 79G of the *Civil Procedure Act* that before the court considers extension of time, the applicant must satisfy the court that that he has good and sufficient cause for filing the appeal out of time. This principle was enunciated in the case of Diplack Kenya Limited vs William Muthama Kitonyi [2018]eKLR an applicant seeking enlargement of time to file an appeal or admission of an already filed appeal must show that he has a good cause for doing so.
17. The Supreme Court in the case of Nicholas Kiptoo Korir arap Salat vs IEBC and 7 Others [2014] eKLR enunciated the principles applicable in an application for leave to appeal out of time. The court stated inter alia that:-

“The underlying principles a court should consider in exercise of such discretion should include:-

- a. Extension of time is not a right of any party. It is an equitable remedy that is only available to a deserving party at the discretion of the court;
- b. A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the court;
- c. Whether the court should exercise the discretion to extend time, is a consideration to be made on a case by case basis;
- d. Whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the court;



- e. Whether there will be any prejudice suffered by the respondent if the extension is granted;
 - f. Whether the application has been brought without undue delay.
18. Similarly in the case of Paul Musili Wambua vs Attorney General & 2 Others [2015]eKLR, the Court of Appeal in considering an application for extension of time and leave to file the Notice of Appeal out of time stated the following:-
- “.....it is now settled by a long line of authorities by this court that the decision of whether or not to extend the time for filing an appeal the Judge exercises unfettered discretion. However, in the exercise of such discretion, the court must act upon reason(s) not based on whim or caprice. In general the matters which a court takes into account in deciding whether or not to grant an extension of time are; the length of delay, the reason for the delay, the chances of the appeal succeeding if the application is granted, the degree of prejudice to the respondent if the application is granted.”
19. Applying the above principles to the present case, the judgment herein was delivered on 14th February 2024 and the applicant filed the current application on 30th April 2024. This is about two months outside the time limited for filing an appeal. The applicant has attributed the delay in filing its appeal on the ground that his counsels got a copy of the judgment one and a half months after it was delivered and they proceeded to review it with a view of making an informed and final decision and the applicant finally instructed his advocates to file an appeal.
20. On perusal of the record, judgment in the lower court was delivered in the presence of both parties’ advocates and the applicant was granted stay of 30 days. Thus, the applicant was aware of the contents of the judgment on the judgment date. The applicant has alleged that they got a copy of the judgment after one and a half months but no proof has been presented to that effect. Not even a letter to the court requesting for the said judgment. The current practice for the last 3 years is that judgments are up loaded in the Judiciary Case Tracking System after delivery. The applicant ought to have accessed the judgment in the CTS.
21. It is my considered view that the applicant is not being truthful as to the cause of the delay. The applicant has not given an account at what stage he got the judgment or when instructions to lodge an appeal were given to the counsel. Blaming the court for delay of providing a copy of judgment, is in my view just an excuse. I am not persuaded by the applicant’s arguments on the reason for delay. It is therefore my considered view that the applicant has not given any plausible explanation on the reasons for delay.
22. On the perusal of the intended Memorandum of Appeal and the judgment of the trial court, it is my considered view that the appeal does not raise pertinent issues of law thus reducing its chances of success of the appeal in the event that this application is granted.
23. In the circumstances it is my considered view that the applicant has not established to the satisfaction of the court that time should be enlarged to enable him file his appeal.
24. Therefore having declined to grant the prayer for admitting the appeal out of time, the prayer for stay of execution of the trial court’s judgment and decree automatically fails since there is no existent appeal. On 30th April 2024 the court granted stay of execution on condition that the applicant deposit half the decretal sum within 30 days but this condition was never complied with. The interim orders for stay stood vacated upon the expiry of 30 days.



25. It is thus my considered view that the application dated 30th April 2024 lacks merit and is hereby dismissed with costs to the respondents.
26. It is hereby so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT THIKA THIS 30TH DAY OF APRIL 2026.

F. MUCHEMI

JUDGE

