

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MILIMANI**  
**COMMERCIAL AND TAX DIVISION**  
**MISC. APPLICATION NO. E1143 OF 2025**

**POWER TWINS**  
**LIMITED.....APPLICANT/APPELLANT**  
**VERSUS**  
**FINTON** **LOGISTICS**  
**LIMITED.....RESPONDENT**

**RULING**

1. This ruling concerns the Applicant’s Notice of Motion dated 7th November 2025 brought under Sections 1A, 1B, 3A and 63(e) of the Civil Procedure Act, Order 22 Rule 22, Order 42 Rule 6 and Order 50 Rule 6 of the Civil Procedure Rules
2. The application principally seeks two substantive reliefs:
  - a. Extension of time to file an appeal out of time against the judgment of the Small Claims Court delivered on 9<sup>th</sup> December 2024; and*
  - b. Stay of execution of the said judgment pending the hearing and determination of the intended appeal.*
3. The background is not contested. Judgment was entered in Small Claims Court Case No. SCCCOMM/E17190/2024 in favour of the Respondent for the sum of Kshs. 563,655.17. The Applicant, being dissatisfied, signified its intention to appeal but failed to lodge the appeal within the prescribed

time. It now seeks the Court's indulgence to enlarge time and stay execution.

4. The application is supported by the affidavit of Thomas Mbugua, a Director of the Applicant, who deposes, in essence, that the intended appeal raises arguable points of law, that delay was occasioned by failure to obtain typed proceedings, that execution is imminent following issuance of a proclamation notice, and that the proclaimed assets are integral to the Applicant's business. The Applicant further avers that it has deposited the decretal sum as security.
5. The Respondent opposes the application through a Replying Affidavit sworn by Sammy Githegi, contending that the Applicant has engaged in a pattern of filing defective applications, that no sufficient cause has been shown for the delay, and that the Respondent is entitled to enjoy the fruits of its judgment without further obstruction.

### **Analysis and determination**

6. Upon consideration of the application, affidavits and material on record, the following issues arise for determination:
  - a. *Whether the Applicant has made a case for extension of time to file an appeal; and*
  - b. *Whether the Applicant has satisfied the conditions for the grant of a stay of execution pending appeal.*

#### Extension of time to file an appeal

7. The power of the court to enlarge time for filing an appeal out of time is expressly donated by Section 95 of the CPA as read with Order 50, Rule 6 of the CPR. The cited provisions

further express that such enlargement of time may be granted even in instances where the period for performing the necessary action may have expired, which would regularize an appeal filed out of time, in any event.

8. According to Section 79G of the CPA, an appeal to the High Court against the decision rendered by a subordinate court shall be filed within a period of 30 days from the date of such decision.
9. The Supreme Court in the case of **Nicholas Kiptoo Korir Arap Salat v 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:
  1. *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;*
  2. *A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the court;*
  3. *Whether the court should exercise the discretion to extend time, is a consideration to be made on a case- to-case basis;*
  4. *Whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the court;*
  5. *Whether there will be any prejudice suffered by the Respondent if the extension is granted;*

*6. Whether the application has been brought without undue delay.*

*7. ...”*

10. While the discretion of the court is unfettered, a successful applicant is obligated to adduce material upon which the court can exercise its discretion in his or her favour.
11. From the record, the impugned judgment was delivered on 9<sup>th</sup> December 2024, while the instant application is dated 7<sup>th</sup> November 2025, a period of close to 11 months. The explanation proffered is that the Applicant was awaiting typed proceedings. While delay in obtaining proceedings may, in appropriate cases, constitute sufficient cause, such delay must be demonstrated with cogent and credible evidence.
12. The Applicant has not placed before the Court any material demonstrating diligent follow-up on the proceedings. More significantly, the record reveals that the Applicant had previously filed an appeal and an application which were struck out. This undermines the assertion that the delay was occasioned solely by lack of proceedings.
13. Further, the multiplicity of defective applications filed by the Applicant points to a pattern of procedural missteps rather than excusable inadvertence.
14. In the circumstances, I am not satisfied that the Applicant has laid a proper basis for the exercise of this

Court's discretion. The delay is inordinate and remains insufficiently explained.

15. Consequently, the prayer for extension of time is unmerited.

*Stay of execution pending appeal*

16. The principles governing stay of execution are settled under Order 42 Rule 6(2) of the Civil Procedure Rules. The Applicant must demonstrate substantial loss, that the application has been made without unreasonable delay, and there is security in due performance.

17. In **Butt v Rent Restriction Tribunal [1982] KLR 417**, the Court emphasized that stay is discretionary and should be exercised in a manner that does not render an appeal nugatory.

18. Substantial loss is the cornerstone of the jurisdiction. It is not sufficient to merely allege substantial loss; the same must be demonstrated.

19. The Applicant asserts that its business will be crippled if execution proceeds. While this is a relevant consideration, no concrete evidence has been placed before the Court to demonstrate the nature, value, or indispensability of the proclaimed assets.

20. On the issue of delay, I have already found that the application has been brought after an inordinate delay, which militates against the grant of stay.

21. On the issue of security, although the Applicant alleges that it has deposited the decretal sum, the existence of security alone cannot cure the other deficiencies.
22. Importantly, the intended appeal itself is not properly before the Court, the prayer for extension of time having failed. There is, therefore, no competent appeal upon which a stay can anchor. Stay cannot be granted *in vacuo*, there must be a valid appeal or intended appeal. Accordingly, the prayer for stay of execution equally fails.
23. In the result, I find that the Notice of Motion application dated 7<sup>th</sup> November 2025 is bereft of merit and is dismissed with costs to the Respondent.

**RULING** delivered virtually, dated and signed at **NAIROBI**

This **30<sup>th</sup>** day of **April** 2026.

**P.M. MULWA**  
**JUDGE**

**In the presence of:**

*Ms. Akech* for Plaintiff/Applicant

Court Assistant: *Lispa*