



**Ken-Knit Sacco v Ocharo (Civil Appeal E005 of 2026)
[2026] KEHC 5954 (KLR) (4 May 2026) (Ruling)**

Neutral citation: [2026] KEHC 5954 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CIVIL APPEAL E005 OF 2026
RN NYAKUNDI, J
MAY 4, 2026**

BETWEEN

KEN-KNIT SACCO APPELLANT

AND

SAMSON SIRO OCHARO RESPONDENT

RULING

1. Before this Court is a notice of motion brought under Article 159 (2) & 164(3), 162(2) of *the Constitution* of Kenya 2010 laws of Kenya, Order 50 Rule 5, Order 51 of the Civil Procedure Rules 2010, Section 3A, 63(e), 75, 78, 79G & 95 of the Civil Procedure Rules 2010 & all enabling provisions of law. The Applicant seeks the following orders:
 - a. That the honorable Court be pleased to extend time to lodge an appeal against the judgement/decree in Eldoret Small Claims Court Case No. SCCCOMM/E074/2025- Samson Siro Ocharo v Ken-Knit Sacco.
 - b. That the grant of the extension of time do operate retrospectively to validate the memorandum of appeal dated 18th March 2026 filed and lodged hereto.
 - c. That pending the hearing and determination of this application and the intended appeal, there be a stay of execution and/or stay of further proceedings in Eldoret Small Claims Court Case No. SCCCOMM/E074/2025-Samson Siro Ocharo v Ken-Knit Sacco.
 - d. That any ongoing execution proceedings, including garnishee proceedings and/or attachment of the Applicant's accounts, be stayed forthwith pending the hearing and determination of this application and the intended appeal.



- e. That costs of this application do abide the outcome of the intended appeal.
2. The application is based on the following grounds:
 - a. The Court has discretion to extend time to appeal.
 - b. The length of delay is not inordinate since the learning of the impugned decision.
 - c. Good and sufficient reason exists for the delay in lodging the memorandum of appeal.
 - d. The intended appeal has a chance of success if the application is granted.
 - e. No prejudice would attend the respondent by the granting of the notice of motion.
 - f. That the Respondent has already commenced execution proceedings, including garnishee proceedings against the Applicant's bank accounts, without serving the Applicant with the requisite notices and/or process.
 - g. That unless this Honourable Court intervenes and grants a stay, the Applicant stands to suffer substantial and irreparable loss as its accounts risk being depleted before the appeal is heard.
 - h. That the intended appeal raises serious and arguable issues, particularly on jurisdiction, which may render the entire proceedings a nullity
3. The application is supported by the annexed affidavit of one Peter Muiruri Njenga who deponed as follows:
 - a. That I am duly authorized official of the Applicant Sacco.
 - b. That I have the authority of the Applicant Sacco and its members to swear this affidavit on its behalf.
 - c. That the Small Claims Court delivered judgement in in Eldoret Small Claims Court Case No. SCCCOMM/E074/2025-Samson Siro Ocharo v Ken-Knit Sacco on 5th December 2025.
 - d. That the Applicant was dissatisfied with the said decision and resolved to challenge the same by way of an appeal.
 - e. That due to the nature of the Applicant being a co-operative society, decisions relating to litigation and expenditure require consultation and approval of members and the governing organs of the Sacco.
 - f. That convening meetings and consultations with members took time, thereby delaying instructions to file the appeal.
 - g. That the Applicant also faced financial constraints, as the Sacco had to mobilize funds from its members in order to meet the costs of the appeal.
 - h. That assembling members and raising the required monies took longer than anticipated and was beyond the Applicant's control.



- i. That upon successfully mobilizing the necessary resources, the Applicant immediately instructed its advocates to file the appeal.
- j. That consequently, the Applicant filed a Memorandum of Appeal dated 18th March 2026, which raises substantial and arguable grounds of appeal namely that:
 - a. The learned Adjudicator erred in law and in fact in assuming jurisdiction over a dispute that arose between a member and a co-operative society contrary to Section 76(1) and (2) of the *Co-operative Societies Act*, which mandates that such disputes be referred to the Co-operative Tribunal.
 - b. The learned Adjudicator misdirected herself in law by holding that the dispute was purely contractual, yet the evidence before the Court demonstrated that the dispute arose out of the business and internal affairs of a co-operative society.
 - c. The learned Adjudicator failed to appreciate that the Respondent was a member and former official of the Appellant Sacco, and that the alleged transaction fell squarely within matters regulated under the Sacco's constitution, by-laws and the *Co-operative Societies Act*.
 - d. The learned Adjudicator erred in law in failing to uphold the Appellant's objection on jurisdiction, thereby proceeding to determine a matter that was legally reserved for the Co-operative Tribunal.
 - e. The learned Adjudicator failed to properly evaluate the evidence tendered by the Appellant, particularly evidence demonstrating that the alleged loan transaction was irregular and undertaken without the approval of the Sacco's governing organs.
 - f. The learned Adjudicator erred in law in holding that the Appellant admitted receipt of the alleged loan, whereas the Appellant's case was that any such transaction was irregular, unlawful and contrary to the Sacco's internal procedures.
 - g. The learned Adjudicator failed to consider that no lawful resolution or authority from the Sacco's members or governing body was produced to sanction the alleged loan transaction.
 - h. The learned Adjudicator misdirected herself by shifting the burden of proof to the Appellant, contrary to the principles of evidence, whereas it was the Respondent's duty to strictly prove the alleged indebtedness.
 - i. The learned Adjudicator failed to properly consider the Appellant's defence and submissions, thereby arriving at a decision that was against the weight of evidence.



- j. The learned Adjudicator erred in law and fact in awarding the Respondent the sum of Kshs. 505,000, interest and costs without sufficient legal and evidential basis.
 - k. The learned Adjudicator failed to consider binding legal principles and authorities relating to disputes involving co-operative societies and their members.
 - l. The learned Adjudicator's decision was contrary to the law, evidence and established principles governing disputes involving co-operative societies.
- k. That I am aware that the Respondent has already commenced execution proceedings against the Applicant, including instituting garnishee proceedings against the Applicant's bank accounts.
 - l. That in particular, the Respondent has obtained orders attaching the Applicant's account held at Co-operative Bank, thereby exposing the Applicant to imminent financial loss.
 - m. That the said execution proceedings were commenced without proper service upon the Applicant, thereby denying the Applicant an opportunity to be heard.
 - n. That unless this Honourable Court grants an order of stay, the execution will proceed and render the intended appeal nugatory.
 - o. That the Applicant is ready and willing to abide by any conditions that this Honourable Court may impose, including provision of security if required.
 - p. That the delay in filing the appeal was not intentional, deliberate or in bad faith.
 - q. That the intended appeal raises serious issues including the jurisdiction of the Small Claims Court to determine disputes involving a co-operative society and its member, matters which are ordinarily reserved for the Co-operative Tribunal.
 - r. That the Applicant has been advised by its advocates on record whose information I believe to be true that the grounds set forth above are sufficient to warrant issuance of extension of time and allow the Applicant to file appeal out of time.
 - s. That I verily believe that in the Applicant's appeal has high chances of success.
 - t. That the Applicant stands to suffer great prejudice and injustice if this Honourable Court declines to extend time, as it will be permanently locked out from exercising its right of appeal.
 - u. That unless this application is allowed, the Applicant's constitutional right of appeal shall be extinguished with no fault on its side.
 - v. That the Respondent will not suffer any prejudice whatsoever if the application is allowed that cannot be atoned by way of costs.



- w. That it is in the interests of justice and fairness that the orders sought be granted.
 - x. That the Applicant is ready and willing to abide by any conditions issued by the honourable Court.
 - y. That the Applicant is keen to pursue the appeal.
4. This Court on its own motion has been able to diligently go to the CTS portal and also the manual case docket the Respondent though served with the Court process has not taken a step memorandum of appearance or Grounds of Opposition or Affidavit to challenge the reliefs being sought by the Applicant/intended Appellant

Decision

5. The Applicant/intended Appellant is aggrieved with the Judgment of the trial Court but apparently failed to file the Appeal within time. Therefore, the first entry by this Court is to establish whether he has demonstrated sufficient cause for invocation of judicial discretion to extend time. This is an area of law which is trite as can be seen in the following cases;
6. In the case of *Cleophas Wasike v Mucha Swala* [1984] eKLR and in *Leo Sila Mutiso v Rose Hellen Wangari Mwangi* Civil Application No. NAI 255 of 1997 in which the Courts made the following observations:

“It is now well settled that the decision whether or not to extend the time for appealing is essentially discretionary. It is also well settled that in general the matters which this Court takes into account in deciding whether to grant an extension of time are first the length of the delay secondly, the reason for the delay, thirdly (possibly) the chances of the appeal succeeding if the application is granted and fourthly, the degree of prejudice to the respondent if the application is granted.”

7. In addition, the Court in *Muringa Company Limited v Archdiocese of Nairobi Registered Trustees* [2020] eKLR William Ouko JA as he then was ruled that:

Some of the considerations, which are by no means exhaustive, in an application for extension of time include the length of the delay involved, the reason or reasons for the delay, the possible prejudice, if any, that each party stands to suffer, the conduct of the parties, the need to balance the interests of a party who has a decision in his or her favour against the interest of a party who has a constitutionally underpinned right of appeal, the need to protect a party’s opportunity to fully agitate its dispute, against the need to ensure timely resolution of disputes; the public interest issues implicated in the appeal or intended appeal; and whether, prima facie, the intended appeal has chances of success or is a mere frivolity.

8. The Court of appeal also in *Seventh Day Adventist Church East Africa Ltd. & Another vs. M/S Masosa Construction Company* Civil Application No. Nai. 349 of 2005 held that:

“As the discretion to extend time is unfettered, there is no limit to the number factors the Court would consider as they are relevant; the period of delay, (possibly) the chances of the appeal succeeding if the application is granted, the degree of prejudice to the Respondent if the application is granted, the effect of the delay on public administration, the importance of compliance with the time limits, the resources of the parties, whether the matter raises



issues of public importance are all relevant but not exhaustive factors...in an application for extension of time, each case must be decided on its own peculiar facts and circumstances and it is neither feasible nor reasonable to lay down a rigid yardstick for measuring periods of delay as explanations for such delays are as many and varied as the cases themselves....the ruling striking out the appeal is not only necessary for exhibiting to the application for extension of time but also for consultations between the Applicant's counsel and their clients and the fact that the ruling was returned to Nairobi for corrections is a reasonable explanation for the delay... where the Respondent has already recovered all the decretal sum and costs attendant to the litigation, the right of appeal being a strong right which is rivalled only to the right to enjoy the fruits of judgment, no prejudice would be caused to the respondent who has enjoyed rights in full if an opportunity is given to the Applicants to enjoy theirs too, even if it is on a matter of principle.”

9. These being the principles to underpin my discretion the affidavit evidence lays the foundation upon which sufficient cause has been established as to why the intended Appellant was not able file the appeal within the set timelines of 30 days as expressly stated in Section 79(g) of the *Civil Procedure Act*. The Court must also bear in mind that the intended Appellant is a public institution and therefore the protocols of decision making can sometimes occasion delay to file an appeal as stipulated in the law. This delay has been explained to the satisfaction of the Court to exercise discretion to enlarge time in favour of the Applicant.
10. The second limb of this notice of motion is on stay of execution pending the hearing and determination of the appeal. The import of Order 42 Rule 6(1) of the Civil Procedure Rules envisages that the application must be filed without unreasonable delay, that the Applicant must ensure deposit of security in terms ordered by the Court and that if the execution process is not stayed it will occasion irreparable harm to the intended Appellant.
11. The approach to be taken by the Court on application for stay of execution is outlined in this persuasive case law. In *Maria Makhoul and Marguerita Desir v Sabina James Alcide* SLUHCVAP No. 30/2011 held that:

“The general rule is for no stay, as a successful litigant is entitled to the fruits of his judgment without fetter. Accordingly, there must be good reasons advanced for depriving or in essence enjoining a successful litigant from reaping the fruits of a judgment in his favor, particularly after a full trial on the merits.”

“The modern authority on the guiding principles the Court employs in exercising its discretion to grant a stay is the case of *Linotype-Hell Finance Ltd v Baker* where Staughton L.J. opined that a stay would normally be granted if the Appellant would face ruin without the stay and that the appeal has come prospect of success. It must be emphasized that it is not enough to merely make a bald assertion to the effect that an Applicant will be ruined. Rather what is required is evidence which demonstrates that ruination would occur in the absence of a stay.”
12. The authority of *Hammond Suddard Solicitors v Agrichem International Holdings* is grounded in the same principle though formulated differently. In that case the Court pointed out that the evidence in support of a stay needs to be full, frank and clear. They went on to state the principle thus:

“...whether the Court should exercise its discretion to grant a stay will depend on all the circumstances of the case, but the essential question is whether there is a risk of injustice to one or other or both parties if it grants or refuses a stay. In particular, if a stay is refused



what are the risks of the appeal being stifled? If a stay is granted and the appeal fails, what are the risks that the respondent will be unable to enforce the judgment? On the other hand, if a stay is refused and the appeal succeeds and the judgment is enforced in the meantime what are the risks of the Appellant being able to recover any monies paid from the respondent?”

13. Similarly, in the Marguerite Desir case the Court held inter alia as follows:

“The Court’s jurisdiction to grant a stay is based upon the principle that justice requires that the Court should be able to take steps to ensure that its judgments are not rendered valueless. The essential question for the Court is whether there is a risk of injustice to one or both parties if it grants or refuses a stay. Further, the evidence in support of the application for stay of execution should be full, frank and clear. The normal rule is for no stay and if a Court is to consider a stay, the Applicant has to make out a case by evidence which shows special circumstances for granting one. The mere existence of arguable grounds of appeal is not by itself a good enough reason.”

14. The question is whether the Applicant will suffer substantial loss in terms of attachment of the school property which is likely to disrupt school operations and affect students’ welfare and best interests. The key parameters on this ground is clearly articulated in the case of *James Wangalwa & Another vs Agnes Naliaka Cheseto* [2012] eKLR, that:

“No doubt, in law, the fact that the process of execution has been put in motion, or is likely to be put in motion, by itself, does not amount to substantial loss. Even when execution has been levied and completed, that is to say, the attached properties have been sold, as is the case here, does not in itself amount to substantial loss under Order 42 Rule 6 of the CPR. This is so because execution is a lawful process. The Applicant must establish other factors which show that the execution will create a state of affairs that will irreparably affect or negate the very essential core of the Applicant as the successful party in the appeal ... the issue of substantial loss is the cornerstone of both jurisdictions. Substantial loss is what has to be prevented by preserving the status quo because such loss would render the appeal nugatory.”

15. I have carefully considered the record filed together with the arguments of the legal Counsels on behalf of the respective parties to this motion. In the instance case there is no dispute whatsoever on the facts. What is being disputed is about the execution process against the school property which is under threat of attachment thereby occasioning harm to the school. In my view given the factual matrix of this case on the strength of the pending appeal which on the face of it is competent and arguable on its merits there is need to stay the execution process in order to preserve the res so as not to render the appeal nugatory

16. Consequently, the Application is granted as follows:

- a. I hereby grant leave for extension of time to the Applicant to file its appeal out of time
- b. That the draft Memorandum of Appeal be deemed as duly filed within time under Section 79 (g) of the *Civil Procedure Act*
- c. That there shall be stay of further proceedings on execution and enforcement of the decree in SCC COMM. Case No. E074 of 2025 pending the hearing and determination of the Appeal against the Judgment of that Court dated 5th day of December 2025



- d. That the Deputy Registrar of the High Court shall cause the typed proceedings to be supplied to the Applicant within 21 days from today's ruling
- e. The costs of this Application shall abide the outcome of the Appeal.

DELIVERED, DATED AND SIGNED AT ELDORET VIA CTS THIS 4TH MAY 2026

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R. NYAKUNDI

JUDGE

