



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA AT NAIROBI  
COMMERCIAL AND TAX DIVISION**

**BETWEEN**

**CORAM: F. MUGAMBI, J  
MISC APPLN NO. E082 OF 2021**

**BETWEEN**

**LUBULLELAH & ASSOCIATES ..... DECREE  
HOLDER**

**VERSUS**

**ZADOK FURNITURE SYSTEMS LTD ..... JUDGMENT  
DEBTOR**

**RULING**

**Background and Introduction**

**1.** By a ruling delivered on 16<sup>th</sup> July 2025, this Court issued orders in respect of the decree holder's application dated 1<sup>st</sup> July 2025. In that ruling, the Court directed that the directors of the judgment debtor, namely Victor Swanya Ogeto and Janet Nyaduko Ogeto, do attend Court for examination on oath regarding the company's capacity to satisfy the decree issued in **Miscellaneous Application No. E082 of 2021**. The Court further directed that the

said directors produce before it the books of account together with all documentary evidence relating to the means, property, and assets of the respondent company.

- 2.** Prayer 2 of the application, which sought to lift the corporate veil and hold the directors personally liable, was deferred pending the outcome of the examination and assessment of the documentary evidence. The matter was subsequently fixed for cross-examination of the judgment debtor's directors on 18<sup>th</sup> November 2025. On that date, however, they had not complied with the orders requiring service of the books of account upon the decree holder. The Court, in its discretion, granted them a further thirty (30) days to comply, failing which the corporate veil of the judgment debtor would automatically stand pierced by effluxion of time.
- 3.** It is against this backdrop that the judgment debtor filed the present application dated 26<sup>th</sup> February 2026, seeking to stay the self-executing portion of the orders and for enlargement of time to file and serve its books of account within forty-five (45) days. The application was supported by the affidavits sworn on 26<sup>th</sup> February and 17<sup>th</sup> March 2026 by

**Janet Nyanduko Ogeto.** It was opposed through a replying affidavit sworn by **Anthony Milimu Lubullelah**, Managing Partner of the decree holder, on 12<sup>th</sup> March 2026.

4. Despite directions having been issued, no submissions had been filed by either party at the time of writing this ruling.

### **Analysis and Determination**

5. Relying on the pleadings on record, the central issue for determination is whether the applicants have laid a sufficient basis for this Court to exercise its discretion in enlarging time for compliance with its orders.
6. The law is settled that the Court retains wide discretionary powers to enlarge time. However, such discretion must be exercised judiciously and not capriciously. A party seeking to benefit from the Court's indulgence must demonstrate cogent and satisfactory reasons for the delay, and must show that the delay is neither inordinate nor prejudicial to the opposing party. This principle was succinctly articulated in **Nicholas Kiptoo Arap Korir Salat V The Independent Electoral & Boundaries Commission & 7 Others, [2014] eKLR.**

- 7.** The applicants contend that the company ceased trading in 2020 and that consequently its accounting records were not readily traceable. They further aver that upon issuance of this Court's orders, they took diligent steps to reconstruct the documentation.
- 8.** In the first instance, I would agree with the submission presented by the respondents that the orders of this Court were self-executing and were to take effect automatically upon lapse of the thirty-day period from 18<sup>th</sup> November 2025. By the time the present application was filed, the time had already lapsed, rendering the Court functus officio. Technically, there was nothing left to extend.
- 9.** Even if I were minded to overlook this procedural hurdle, still, the delay occasioned by the judgment debtors remains wholly inordinate. The record shows that nearly eight months had elapsed between the ruling of 18<sup>th</sup> July 2025 and the filing of the present application in February 2026. This means that almost one year down the line, the judgment debtor was yet to comply with the orders issued by this Court.

**10.** Moreover, the correspondence relied upon by the applicants to allegedly prove their diligence does little to mitigate their default. Indeed, some of the documents tendered are dated as late as March 2026, which only underscores the lack of diligence and seriousness with which they approached compliance. The invitation to Kaxton Certified Public Accountants to prepare and audit the company's financial records for instance, was only issued on 8<sup>th</sup> January 2026, which was several months after the Court had already directed production of the books of account. This belated attempt at compliance cannot be construed as evidence of good faith. Rather, it demonstrates a reactive and reluctant posture, which was taken only after the consequences of non-compliance had crystallized.

**11.** The cumulative effect of this conduct is to show that the applicants were neither proactive nor candid in their dealings with the Court. Their delay is not merely technical but substantive, and it has prejudiced the decree holder who has been kept waiting to enjoy the fruits of their judgment. In these circumstances, the judgment debtors cannot be said to have approached the Court with clean hands, and

they are undeserving of the Court's discretionary indulgence.

## **Disposition**

**12.** In light of the foregoing, I find that the applicants have failed to demonstrate sufficient cause to warrant the exercise of this Court's discretion in their favour. The application dated 26<sup>th</sup> February 2026 is therefore dismissed with costs.

**DATED, SIGNED AND DELIVERED IN NAIROBI  
THIS 11<sup>TH</sup> DAY OF MAY 2026.**

**F. MUGAMBI  
JUDGE**

**Delivered in presence of:**

Lubullelah - DH  
Ms Wangari - JD  
Court Assistant: Lillian & Gloria