

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT VOI

MISC. CIVIL APPLICATION NO. E044 OF 2025

GUBE MANGALE NYAWA.....

APPLICANT

=VERSUS=

ORUMOI OLE KIPOIPOI.....

.....RESPONDENT

RULING

1. The application coming for consideration in this Ruling is the one dated 12th November, 2025 seeking stay of execution pending appeal.
2. The same is supported by the Affidavit of the Applicant in which it is deposed as follows:
 - (i) THAT the Deponent is an adult male of sound mind and is competent and/or capable of swearing the Supporting Affidavit.
 - (ii) THAT he was intending to make and file an appeal out of time against the Judgment of the hon. Court dated 19th day of May 2023 delivered at Taveta Law Court.

- (iii) THAT his best reasons for preferring an appeal were that he felt dissatisfied and/or oppressed with the said judgment for paying a debt of Kshs. 400,000/=, costs plus interests, which were not just for him to pay to the Respondent.
- (iv) THAT he had already paid the Respondent Kshs. 200,000/= out of the decreed amount as per the annexed copy of the Decree, issued on the 26th day of July 2023, and did prefer to make an appeal out of time, which appeal was necessary and/or mandatorily preferred, for the interests of justice.
- (v) THAT he did therewith annex the following items of Exhibits:
- (a) Copy of the said judgment delivered on the 19th day of May 2023 marked Exhibit No. GMN-1.
 - (b) Copy of the said Decree issued on the 26th day of July 2023 marked Exhibit No. GMN-2.
 - (c) Bundle of payment receipts marked Exhibit No. GMN-3.

(vi) THAT it was in the interest of justice, and to safeguard the Applicant's right to liberty, that the application be heard as a matter of extreme urgency.

3. The Respondent, Orumoi Ole Kipoipoi filed a replying affidavit as follows;

(i) THAT he is the Respondent in this matter and is competent to make the Affidavit.

(ii) THAT he has read and understood the Applicant's Amended Application dated November 12, 2025, which was explained to him by his Advocate, Mr. Gideon Solonka Kilakoi, and he makes this Affidavit from his own knowledge in response to it.

(iii) THAT he has been advised by his Advocate, which he believes to be true, that the Application is a non-starter, an afterthought, and an abuse of the court process.

(iv) THAT interlocutory judgment was entered in this matter on May 19, 2023, after the Applicant was served but failed to enter an appearance or file a defense within the required timeline.

- (v) THAT Following that judgment, the Applicant was served with a Notice of Entry of Judgment dated August 2, 2023, and he accepted service by signing it.
- (vi) THAT while the Applicant now claims he did not receive the notice and that the signature is a forgery, the Respondent asserts that this is a serious accusation requiring proof, and the Applicant should have called the process server for cross-examination.
- (vii) THAT he is advised that if the Applicant was aggrieved, he should have immediately applied to have the judgment set aside to defend himself, but he failed to do so.
- (viii) THAT the Applicant was later served with a Notice to Show Cause dated April 4, 2024, requiring him to appear on April 25, 2024.
- (ix) Regarding the Applicant's claim of forgery because his cousin's name was captured as "Abdul Mangale," the Respondent notes this occurred in the presence of the Area Chief and the process server was not called for cross-examination.

- (x) THAT the Applicant failed to appear despite being served and warrants for his arrest were issued.
- (xi) XI. The Applicant was arrested on October 1, 2024, and despite claiming to represent himself, he engaged the firm of Kirui Kamwibu & Co. Advocates on October 2, 2024.
- (xii) THAT on October 4, 2024, the Applicant chose to represent himself and filed an application to deposit Kshs. 70,000 and pay the rest in installments.
- (xiii) THAT the Applicant admitted to the debt and deposited a total of Kshs. 200,000 in three separate installments.
- (xiv) THAT following the Applicant's own request, a ruling on February 27, 2025, directed him to pay the remaining balance in monthly installments of Kshs. 50,000.
- (xv) Instead of paying, the Applicant defaulted for nearly seven months and then filed the current application in bad faith.

- (xvi) The Respondent reiterates that any grievance regarding the judgment should have been addressed by a timely application to set it aside.
- (xvii) He is advised that the Applicant has provided no sufficient grounds or justifiable reasons for the delay to warrant filing an appeal out of time.
- (xviii) The Applicant was always aware of the suit but chose not to participate, leading to the interlocutory judgment.
- (xix) He is advised that the prayer for a stay of execution is a non-starter because execution had already been undertaken before the Applicant filed his recent applications.
- (xx) The Applicant never sought to set aside the judgment, which is the proper procedure, and therefore no valid ground for appeal exists.
- (xxi) Contrary to the Applicant's claims of acquittal in criminal proceedings, the agreement in this suit was made before any charges were instituted, and the Applicant agreed to it willingly without coercion.

(xxii) No evidence of acquittal or a related case number has been provided by the Applicant, which the Respondent suggests is an attempt to mislead the court.

(xxiii) The claim that the Applicant paid Kshs. 200,000 out of fear of arrest is unfounded, as he is now estopped from denying what he previously accepted.

(xxiv) He is advised that since service was duly effected, the allegations of forgery remain mere unproven allegations.

(xxv) He is advised that the Applicant has failed to provide any defense showing a strong case against the original suit.

(xxvi) He is further advised that the issues regarding service were overtaken by events once the Applicant accepted the debt and proposed a settlement plan.

(xxvii) The Respondent states the Applicant is guilty of laches and should not be allowed to deny him the fruits of a validly obtained judgment.

(xxviii) The application is characterized as an afterthought, an abuse of court process, and a waste of judicial time and asks that it be dismissed with costs.

4. The parties filed written submissions as follows;
5. The applicant submitted that he seeks two primary forms of relief, leave to file an appeal out of time and a stay of execution of an interlocutory judgment and decree dated May 19, 2023, and February 25, 2025, respectively.
6. Although the respondent initially opposed the application due to a lack of stated reasons for the delay and the absence of an intended appeal, the applicant has since filed an amended application addressing these deficiencies by providing explanations for the inordinate delay and attaching an intended appeal to demonstrate its arguability.
7. The applicant submitted has met the legal criteria for a stay of execution under Order 42 Rule 6(2) of the Civil Procedure Rules, which requires a showing of potential substantial loss, an application made without unreasonable delay, and the provision of security.
8. The applicant contends that substantial loss is imminent because he is currently required to pay the decretal sum in monthly installments of Kshs 50,000, having already paid Kshs 200,000, and faces warrants of arrest for any failure to pay.

9. Furthermore, the applicant asserts that he has offered good security to ensure the respondent is not denied the fruits of the judgment should the appeal fail.
10. Regarding the extension of time to appeal, the applicant explains the delay by highlighting his status as a layperson who was initially unaware of the proper appellate procedures.
11. Instead of appealing immediately, he unsuccessfully attempted to seek recourse in the same lower court to lift warrants of arrest and explain his version of events.
12. The applicant cited various judicial precedents, including Supreme Court decisions, to emphasize that the court has the discretionary power to grant an extension of time when a party provides a plausible and satisfactory explanation.
13. The applicant maintains that his intended appeal is arguable, has high chances of success, and raises serious issues such as the alleged use of forged signatures on an affidavit of service.

14. Finally, the applicant submitted that granting the application is necessary to protect the right to a hearing and ensure that the ends of justice are met for both parties.
15. The issues for determination in this application are as follows;
 - (i) Whether the applicant has met the threshold for the grant of leave to appeal out of time and;
 - (ii) Whether he has satisfied the conditions for a stay of execution pending the hearing and determination of the intended appeal.
16. In addressing the first issue, the court must exercise its discretion under Section 7 of the Appellate Jurisdiction Act and Order 42 Rule 6 of the Civil Procedure Rules.
17. The Supreme Court of Kenya in **Nicholas Kiptoo Arap Korir Salat v Independent Electoral and Boundaries Commission & 7 others [2014] eKLR** established that an extension of time is not a right but a matter of judicial discretion, where the applicant must demonstrate the length of the delay, the reason for the delay, and the arguability of the intended appeal.

18. While the respondent argues that the delay is inordinate and the applicant's previous participation in a payment plan constitutes an estoppel, the court must balance this against the right to be heard on a judgment that the applicant claims was obtained through a defective service involving forgery.
19. The applicant's explanation that he is a layperson who initially sought recourse in the lower court to lift arrest warrants provides a plausible, albeit imperfect, explanation for the lapse in time.
20. Regarding the stay of execution, the applicant must demonstrate that he will suffer substantial loss unless the order is granted, as held in **Silverstein v Chesoni [2002] 1 KLR 867**.
21. The applicant has already paid Kshs. 200,000, which is half of the principal debt, and continues to face the threat of imprisonment through warrants of arrest for the balance.
22. This threat to personal liberty, coupled with the financial strain of monthly installments while challenging the very foundation of the debt, constitutes substantial loss.

23. Although the respondent asserts that the applicant is merely seeking to delay the "fruits of judgment," the court finds that the allegation of forged service raises a triable issue that deserves an appellate review.
24. The court should lean towards a hearing on merits rather than shutting out a party on technicalities, provided the other party can be compensated by costs or security.
25. Having considered the rival submissions, I find that the interests of justice favor the preservation of the status quo to allow the applicant his day in the High Court.
26. The applicant's willingness to pay a significant portion of the decree demonstrates good faith rather than a mere attempt to frustrate the respondent.
27. Consequently, the application dated 12th November 2025 is hereby allowed.
28. The applicant is granted leave to file and serve his Memorandum of Appeal within thirty (30) days of this ruling.
29. There shall be a stay of execution of the judgment and decree dated 19th May 2023 and the subsequent installment orders, on the condition that the sums already paid remain

with the respondent as security for the due performance of the decree.

30. The costs shall abide the outcome of the appeal.

31. Orders to issue accordingly.

Dated, signed and delivered this 12th day of May 2026 virtually at Voi High Court.

**ASENATH ONGERI
JUDGE**

In the presence of:-

Court Assistant: Mabishi/Millicent

Ms Mashalla for the Applicant

Mr. Chacha for the Respondent