



County Government of Kirinyaga & another v Kenya Medical Practitioners, Pharmacists & Dentists Union (Civil Appeal (Application) E002 of 2023) [2025] KECA 958 (KLR) (2 May 2025) (Ruling)

Neutral citation: [2025] KECA 958 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NYERI
CIVIL APPEAL (APPLICATION) E002 OF 2023
JW LESSIT, A ALI-ARONI & GV ODUNGA, JJA
MAY 2, 2025**

BETWEEN

THE COUNTY GOVERNMENT OF KIRINYAGA 1ST APPLICANT

CHAIRMAN COUNTY PUBLIC SERVICE BOARD 2ND APPLICANT

AND

KENYA MEDICAL PRACTITIONERS, PHARMACISTS & DENTISTS UNION & 23 OTHERS RESPONDENT

(Being an application to re-instate the stay orders granted on 20th September 2024 and to enlarge time within which the applicant can comply with the conditional orders of stay in Civil Appeal Application No. E002 of 2023)

RULING

1. This Court in a ruling delivered on the 20th September 2023 granted the applicants a conditional stay of execution pending their appeal to this Court on condition they deposited Kshs.500,000/= within 30 days from the date of the ruling. The conditional stay was to lapse automatically in the event of non-compliance after 30 days. In their application dated 4th November, 2024 brought pursuant to rule 4, 5(2) (b), 43, 44, 49, 51, 55 and 56 of the Court of Appeal Rules, the applicants seek:

- “ 3). Court be pleased to reinstate the stay orders granted on 20th September, 2024 and enlarge time within which the applicants can deposit the security for costs in compliance with the conditional stay pending the hearing and determination of the appeal.
- 4). Court be pleased to give any other order and/or further orders it deems fit and just.”



2. This application was heard through this Court’s virtual platform on the 20th January 2025. At the hearing, learned counsel Ms. Small was present holding brief for Ms. Wanyonyi for the applicants, while learned counsel Mr. Misati was present for the respondents. Each advocate made brief highlights of their written submissions.
3. Ms. Small relied on the supporting affidavit of Ms. Carolyn Kinyua, County Attorney of the applicants dated 4th November 2024 and the further affidavit by same deponent dated 16th January 2025; and the applicants’ written submissions dated 15th January 2025. In brief highlights, counsel urged that the Court gave stay on condition Kshs.500,000/= was deposited with the Court within 30 days to serve as security for costs. She urged that the applicants were unable to meet the timelines due to no fault of their own, but due to delay in release of exchequer for the period between September- November 2024. Counsel urged that the Court’s power to extend time was unfettered and urged Court to grant the application to deposit the said amount within 30 days of the time of the order, urging that the money is now available. She placed reliance on the Supreme Court case of Nicholas Kiptoo Arap Korir Salat vs. Independent Electoral and Boundaries Commission & 7 Others [2014] eKLR on the underlying principles applicable to extension of time applications. She also urged that the Court should grant extension of time where, like in this case, there is a justifiable reason for the delay, placing reliance on the case of Andrew Kiplagat Chemarigo vs. Paul Kipkorir Kibet [2018] eKLR.
4. Mr. Misati for the respondents opposed the application, relying on the replying affidavit by Dr. Davji Atella dated 6th January 2025 and the written submissions dated 17th January 2025. Counsel urged that the prayer to reinstate stay was not available reason being the applicants made similar application in ELRC No. E002 of 2023 and the same was granted. However, they have not disclosed to this Court the existence of said order. Counsel urged that the applicants have come with unclean hands. Counsel urged that the excuse the applicants have given for the delay is not valid, however, as the respondents did not mention the issue of validity of the reasons advanced by the applicants, the same was dropped. Counsel urged us to consider the application applying the principles in the case of Paul Wanjohi Methane vs. Duncan Gichane Mathenge [2013] eKLR and Mohamed Sally Sese (Sha Sese) vs. Fullon Corporation Ltd & Another [2006] eKLR, for the proposition that the power to grant the order sought is discretionary and that the prejudice to the other party should be considered.
5. In a quick rejoinder, Ms. Small urged that the stay urged by the respondents was in a judicial review matter between the applicants’ and the PSC, while the appeal before this Court was against the decision of Marete, J. between the parties in this appeal and is a totally different matter.
6. The Supreme Court in the case of Nicholas Kiptoo Arap Korir Salat vs. Independent Electoral and Boundaries Commission & 7 Others [2014] eKLR stated as follows;

“ Extension of time being a creature of equity, one can only enjoy it if he acts equitably: he who seeks equity must do equity. Hence, one has to lay a basis that he was not at fault so as to let time to lapse. Extension of time is not a right of a litigant against a court, but a discretionary power of the courts which litigants have to lay a basis where they seek courts to grant it.”
7. The Supreme Court in the same case then set out the conditions for extension of time to file an appeal as follows:
 - i. Extension of time is not a right of a party. It is an equitable remedy that is only available to a deserving party at the discretion of the Court;
 - ii. A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the court



- iii. Whether the court should exercise the discretion to extend time, is a consideration to be made on a case to case basis;
 - iv. Whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the Court;
 - v. Whether there will be any prejudice suffered by the respondents if the extension is granted;
 - vi. Whether the application has been brought without undue delay; and
 - vii. Whether in certain cases, like election petitions, public interest should be a consideration for extending time.
8. Rule 4 of the Court of Appeal Rules which that deals with applications for extension of time stipulates as follows:
- “ 4. Extension of time
- The Court may, on such terms as may be just, by order, extend the time limited by these Rules, or by any decision of the Court or of a superior court, for the doing of any act authorized or required by these Rules, whether before or after the doing of the act, and a reference in these Rules to any such time shall be construed as a reference to that time as extended.”
9. The principles applicable to an application for extension of time to file an appeal out of time are the same as those applicable to extension of time to comply with an order of the Court. An applicant must lay a basis for the application and persuade the Court to find in its favour that it/or they were not at fault and that they did not just let the time to lapse. There must be advanced the reason for the delay, which explanation must be reasonable and to the satisfaction of the Court. The power of the Court to extend time is not an absolute right, it is discretionary power.
10. We have considered this application and the submissions by counsel as well as the affidavits for and against the same. The applicants have explained the reasons for the delay in depositing the amount required by the Court, urging that despite diligent efforts to ensure timely compliance with the said orders they were unable to meet the 30 days conditional time period within which to comply. The reasons advanced include:
- i. The applicants depend on disbursements from the National Treasury to meet budgetary funding;
 - ii. There has been a delay in the disbursements of funds so that by the time the disbursement for September and November 2024 were released it was already too late to meet the timelines;
 - iii. The applicants have moved to Court with speed without undue delay to seek for the extension of time; and.
 - iv. The reasons for the delay are beyond the control of the applicants.
11. Having considered the application and the rival submissions of the parties, we are persuaded that the applicants are not to blame for the delay in meeting the time frame set for compliance with the Court’s order to deposit the amount ordered by the Court. The delay in disbursement of exchequer is plausible and is a reasonable and satisfactory explanation for the delay. Besides we are satisfied that the reason for the delay was beyond the applicants’ control.



12. This Court granted the conditional stay having found that the applicants had an arguable appeal that would be rendered nugatory unless the stay was granted. We are satisfied that the position has not changed. We are satisfied that the application has merit. The applicants deserve the extension of time so that they may comply with the order to deposit the amount ordered and pave way for the parties to be heard substantively.
13. The result is that the application dated 4th November 2024 is granted as prayed in terms of prayer 2 and 3. The applicants will have 14 days within which to deposit the sum ordered by this Court in its ruling of 20th September 2024.
14. The costs of the application shall abide the outcome of the appeal.

DATED AND DELIVERED AT NYERI THIS 2ND DAY OF MAY, 2025.

J. LESIIT

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JUDGE OF APPEAL ALI – ARONI

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JUDGE OF APPEAL

G. V. ODUNGA

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JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

