



REPUBLIC OF KENYA



KENYA LAW
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**Modern Coast Coaches Limited v Ali (Miscellaneous Application
E066 of 2025) [2025] KEELRC 2170 (KLR) (18 July 2025) (Ruling)**

Neutral citation: [2025] KEELRC 2170 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
MISCELLANEOUS APPLICATION E066 OF 2025**

**JW KELI, J
JULY 18, 2025**

BETWEEN

MODERN COAST COACHES LIMITED APPLICANT

AND

GHALIB ABDALLA ALI RESPONDENT

RULING

1. The Appellant/Applicant vide Notice of Motion application dated the 26th of February 2025 brought under the provisions of Article 159 of the Constitution of Kenya; Sections 1A,1B and 3A of the Civil Procedure Act; Rule 8 of the Employment and Labour Relations Court (Procedure) Rules read together with Section 17 of the Employment and Labour Relations Act; Order 51 of the Civil Procedure Rules 2010; and all enabling provisions of law, sought the following orders:-
 - a. Spent
 - b. Spent
 - c. The Honourable Court be pleased to issue an order staying the intended sale of M/V Registration Number KCQ0X7V by First Choice Auctioneers.
 - d. The Honourable Court be pleased to issue orders directing the claimant/respondent and his agents or those acting under him to forthwith release M/V Registration Number KCQ0X7V to the applicant.
 - e. The OCS Industrial Area Police Station be and is hereby ordered to ensure compliance with the above orders.
 - f. The Court be pleased to grant leave to the applicant to file an appeal out of time against the whole judgment and/or decree resulting from the decision of Hon. S.N. Muchungi (Mrs)



(PM) delivered on 20th September 2024 in Milimani CMEL E1156/2022 *Ghalib Abdalla Ali v Modern Coast Coaches Limited*.

- g. The Court be pleased to order stay of execution of the judgment and/or decree resulting from the decision of Hon. S.N. Muchungi (Mrs) (PM) delivered on 20th September 2024 in Milimani CMEL E1156/2022 *Ghalib Abdalla Ali v Modern Coast Coaches Limited* pending the hearing and final determination of the appeal.
- h. That costs of this application be in the cause.

2. Grounds of the application

- a. On 20th September,2024 the court entered Judgment in favour of the Respondent in Milimani CMEL/E1156/2022 *Ghalib Abdalla Ali v Modern Coast Coaches Limited*.
- b. On the said date the court issued 30 days stay of execution awaiting the processing of the Judgment. The Advocates for the Applicant then wrote to the court seeking for a copy of the Judgment to as to advise their Applicant further on the outcome and expected steps to take.
- c. The Advocates then communicated the decision of the court to its clients but could not take any steps as they awaited the written judgement to be delivered. Unfortunately, by the time the written judgment was procured on 17th December, 2024 the time for filling an Appeal as prescribed under the law had lapsed.
- d. However, on the 21st of January 2025, First Choice Auctioneers purportedly with instructions from the claimant and without serving any proclamations on the Applicant attached M/V KCQ 0X7V Scania Lorry which was full of a consignment of fertilizer worth Kshs. 2,500,000/- a perishable commodity.
- e. The said commodity fertilizer belongs to the Government of Kenya and the same is highly perishable which will exacerbate the situation and expose the Applicant to a suit for recovery of the value of goods.
- f. The Applicants subsequently sought the orders of the court to stay execution and sale of the M/V KCQ 0X7V which stay is set to expire on the 27th February 2025.
- g. Upon reading the written judgment and procuring the instructions of the Applicant it became apparent that an Appeal should be preferred on various grounds specifically as the termination of the Claimant was due to inappropriate conduct with a minor.
- h. The delay in filing the appeal was occasioned by matters outside the control of the applicant and they should be granted a chance to be allowed to ventilate its appeal.
- i. The applicant is aggrieved by the whole of the said judgment and intends to file the annexed Memorandum of Appeal.
- j. The intended Appeal mainly intends to set aside entire decision of the Honourable Court as delivered on 20th September,2024 and is based on the grounds of appeal particularized in the application and in the applicant's draft memorandum of appeal.
- k. Unless this Honourable Court intervenes, the Respondent will proceed with the execution of the Judgment Milimani CMEL/E1156/2022 *Ghalib Abdalla Ali v Modern Coast Coaches Limited* which may lead to miscarriage of justice and render the intended Appeal otiose.



The Applicant attributes the five (5) month delay in filing the appeal to challenges outside the control of the Applicant which have not been substantiated, hence their reason for delay is not justified. The Applicant has not accounted for this delay. It is the Respondent's view that the delay is intentional as the Applicant seeks to preserve the status quo pending filing of the appeal and prevent the Respondent from enjoying the fruits of his judgment. In addition to the foregoing, to secure the stay orders, the Applicant ought to have deposited security, however, this has not been done and there is no indication that the Applicant intends to deposit any security for the performance of the decree.

8. Finally, the Respondent stated that the Applicant has approached this Honourable Court with unclean hands and has failed to disclose material facts to aid the court in issuing proper orders. A ruling having been delivered on the same issues, the Applicant ought to Appeal if not satisfied by the lower court's decision and not file another application in total abuse of the court process. Furthermore, there is no appeal pending to warrant a stay of execution.

Decision.

9. The application was canvassed by way of written submissions. Both parties complied.
10. The court identified the issues for determination as follows:-
 - a. Whether the Court should grant leave to the Intended Appellant to file its appeal out of time against the ruling delivered on 20th September 2024.
 - b. Whether the Court should grant the Intended Appellant stay of execution of the Judgment delivered on 20th September 2024 pending the hearing and determination of the Appeal.

Whether the Court should grant leave to the Intended Appellant to file its appeal out of time against the ruling delivered on 20th September 2024.

11. The Intended Appellant filed a draft Memorandum of Appeal annexed to their Notice of Motion application dated 26th February 2025.
12. Section 12 of the [*Employment and Labour Relations Court \(Procedure\) Rules 2024*](#) provides that:-
 - “(1) Where a written law provides for an appeal to the Court, an appellant shall file a memorandum of appeal with the Court within the time specified under that written law.
 - (2) Where an appeal is from a magistrate's court or where no period of appeal is specified in the written law referred to in subrule (1), the appeal shall be filed within thirty days from the date the decision is delivered.”
13. This is seconded by Section 79G of the [*Civil Procedure Act*](#) 2010, which provides:-

“Every appeal from a subordinate court to the High Court shall be filed within a period of thirty days from the date of the decree or order appealed against, excluding from such period any time which the lower court may certify as having been requisite for the preparation and delivery to the appellant of a copy of the decree or order: Provided that an appeal may be admitted out of time if the appellant satisfies the court that he had good and sufficient cause for not filing the appeal in time.”
14. An appeal of the impugned decision should have been filed before the Court within 30 days of the decision.



15. On the form of appeals, Order 42 Rule 1 provides that:-
- “(1)) Every appeal to the High Court shall be in the form of a memorandum of appeal signed in the same manner as a pleading.
- (2) The memorandum of appeal shall set forth concisely and under distinct heads the grounds of objection to the decree or order appealed against, without any argument or narrative, and such grounds shall be numbered consecutively.”
16. To comply with the above set out provisions, therefore, the Intended Appellant should have filed their Memorandum of Appeal before this Court within 30 days of the subordinate court’s decision, hence by 20th October 2024. The Intended Appellant failed to comply in that they filed their Memorandum of Appeal dated on 26th February 2025, as an annexure to the Affidavit in Support of the present Motion.
17. The Intended Appellant justifies their failure to file their appeal in good time by stating that there were not given notice of the delivery of judgment, and that there was a delay in obtaining a copy of the judgment dated 20th September 2024. The Respondent counteracts this averment by stating that the Intended Appellant/Applicant was present during the delivery of judgment on 20th September 2024 and in fact sought, through an oral application, and was granted stay of execution for 30 days. Further, he takes the view that the Intended Appellant/Applicant is indolent, as he only requested for a copy of the judgment on 24th October 2024, after the lapse of the time for filing an appeal.
18. The jurisdiction of this Court to enlarge time derives from Rule 18 of the [*Employment and Labour Relations Court \(Procedure\) Rules 2024*](#) which provides:
- “The Court may, if circumstances justify, extend the time prescribed for the filing of an appeal or any document relating to an appeal.”
19. Section 79G of the [*Civil Procedure Act*](#) as set out above, which is also applicable, states that:-
- “Provided that an appeal may be admitted out of time if the appellant satisfies the court that he had good and sufficient cause for not filing the appeal in time.”
20. It also derives from Order 50 Rule 6 of the [*Civil Procedure Rules 2010*](#) which provides that:-
- “Where a limited time has been fixed for doing any act or taking any proceedings under these Rules, or by summary notice or by order of the court, the court shall have power to enlarge such time upon such terms (if any) as the justice of the case may require, and such enlargement may be ordered although the application for the same is not made until after the expiration of the time appointed or allowed:
- Provided that the costs of any application to extend such time and of any order made thereon shall be borne by the parties making such application, unless the court orders otherwise.”
21. The above means that the threshold which the Intended Appellant ought to meet is that they must satisfy the court that they had a good and sufficient cause for failing to file the appeal in time; and they must show that the justice of the case favours the extension of time.



22. The Honourable Supreme Court in the case of *Nicholas Kiptoo Arap Korir Salat v The Independent Electoral and Boundaries Commission & Others* [2014] eKLR, considered at length and re – stated the principles which should guide a Court considering an application for leave to extend time. It stated: -

“From the above caselaw, it is clear that the discretion to extend time is indeed unfettered. It is incumbent upon the applicant to explain the reasons for delay in making the application for extension and whether there are any extenuating circumstances that can enable the Court to exercise its discretion in favour of the applicant.

This being the first case in which this Court is called upon to consider the principles for extension of time, we derive the following as the under-lying principles that a Court should consider in exercise of such discretion:

- a. 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;
- b. A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the court;
- c. Whether the court should exercise the discretion to extend time, is a consideration to be made on a case to case basis;
- d. Whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the Court;
- e. Whether there will be any prejudice suffered by the respondents if the extension is granted;
- f. Whether the application has been brought without undue delay; and
- g. Whether in certain cases, like election petitions, public interest should be a consideration for extending time.”

23. In *Kenya Ports Authority v Silas Obengele* Civil Application No Nai 297 of 2004 [2006] 2 KLR 112 the Court held that:

“Whereas it is now settled that whenever there is a delay, even for one day, there must be some explanation for it otherwise an extension may not be granted where there was material before the single judge from which he could and did conclude that the delay or the periods of delay...the full bench will not interfere”

24. Applying the factors set out by the Supreme Court in the *Nicholas Salat case* (*supra*) in relation to this case, the delay in the present case spans about 3 months (from 20th October 2024 the date by which the appeal should have been filed, to 26th February 2025 when the draft Memorandum of Appeal was actually filed). The reason advanced for the delay is that the Intended Appellant was not given notice of the delivery of judgment, and failed to obtain a copy of the judgment delivered on 20th September 2024 in good time. Is the reason for the delay given by the Intended Appellant satisfactory?

25. I note from the annexures to the Supporting Affidavit sworn on 26th February 2025 that the Intended Appellant applied for a certified copy of the judgment on 24th October 2024 over one month after delivery of the impugned judgment. They followed up on their request on 20th November 2024. To my mind, the Intended Appellant is guilty of laches.



26. The next question that I must consider is whether the Respondent will suffer prejudice if the Intended Appellant is granted leave to file their appeal out of time. I find that litigation must come to an end. The delay in failing to file the appeal is not explained or justified.
27. On the issue of whether there has been undue delay in bringing this application, I am cognizant of the fact that the Judgment of the Trial Court (Hon. S.N. Muchungi) was delivered on 20th September 2024, and this application was filed on 26th February 2025. That is 5 months unjustified delay. I find the leave to file appeal out of time is not justified.

Whether the Court should grant the Appellant/Applicant stay of execution of the Judgment and Decree delivered on 20th September 2024 pending the hearing and determination of the Appeal.

28. On this issue of stay of execution, Rule 21 of the [Employment and Labour Relations Court \(Procedure\) Rules 2024](#) states:-

“21.

(1) Where an application for stay of execution pending appeal has been lodged, the applicant shall, in the supporting affidavit, declare whether a similar application has been filed in any other court

(2) An application for stay of execution pending appeal shall be filed in the appeal file.”

Since the Rules are silent on the conditions for granting stay then the lacuna is addressed by Order 42 Rule 6 (2) of the [Civil Procedure Rules](#) to wit:-

“(2) No order for stay of execution shall be made under subrule (1) unless—

(a) the court is satisfied that substantial loss may result to the applicant unless the order is made and that the application has been made without unreasonable delay; and

(b) such security as the court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the applicant.”

29. It is not in dispute that the Honourable Court (Hon. S.N. Muchungi(PM) in Milimani [MCELRC](#) No. E1156 of 2022, delivered a Judgment in favour of the Respondent herein on 20th September 2024. The Applicant herein sought and was granted stay of execution for 30 days. Once those stay orders lapsed, the Applicant made another application dated 17th December 2024 before the trial court seeking stay of execution pending appeal. I have seen the Ruling of the trial court dated 12th March 2025 on this application. The same is produced as annexure marked “GAA-3” attached to the Replying Affidavit of the Respondent sworn on 27th March 2025. Although the trial court appears to have granted temporary stay orders to the Applicant on 20th January 2025, in this ruling, the trial court dismissed the application for stay pending appeal, on the premise that no appeal had been filed.
30. The applicant on filing this application the court granted a conditional stay of execution on the 18th March 2025 for the auctioneer charges to be paid and the decretal sum deposited in joint interest earning account in 30 days. The said order was not complied with and expired. I am guided by the decision of the court of appeal decision in [Charangu & another v Wanjeri](#) [2023] KEHC 23819 (KLR) where the court observed and held as follows:-“This Court (Ong`udi J.) vide its ruling delivered on July 6, 2021 granted stay of execution on conditions, failure to comply with which was to automatically vacate the order of stay. The Applicants did not comply with the orders within the stipulated time of one month granted by the court and the orders for stay stood vacated after the lapse of the said



period. It was incumbent upon the Applicants to satisfactorily explain the delay. The Applicants have not given any reason as to why they did not comply with the conditions for stay orders. All that their advocate hinted in his supporting affidavit is that they made the instant application immediately it (not clear what) came to the attention of the advocates. There was no mention as to when the advocates learn of the same. The statement is in itself vague and does not sufficiently explain the reason for non-compliance. The order for conditional stay was issued in July 2021 and the instant application made in October 2022. The application was thus made one year and three months after the orders for stay were granted. I consider the delay of the said period to be inordinate. Considering that no explanation has been offered for the delay, the same is inexcusable..Article 159 of the Constitution of Kenya, 2010 is categorical that justice shall be administered without undue delay. It is also trite that litigation must at a certain point come to an end. It is therefore my view that the inordinate delay by the Applicants in this matter disentitles them to the discretion of this court. I associate myself with the decision in Dickson Miriti Kamonde v Kenya Commercial Bank Ltd [2006] eKLR where it was held that: “...The delay cannot be excused and an indolent party must reckon with consequences of inaction.”

31. In the upshot, the Court finds that the Applicant has not persuaded the court that they are deserving of orders for enlargement of time to comply with the orders of the court issued on July 6, 2021. The applicant submits it is willing to comply with order on security yet it did not explain the non-compliance with the interim orders of stay of the lower court and of this court. The court finds that the applicant is underserving of further orders of stay and of enlargement of time to file appeal 5 months late. The Respondents has earned the right to enjoy his fruits of judgment without any further delay. The sword of justice cuts both ways.
32. In the upshot the application is dismissed with costs to the respondent .
33. Right of appeal granted.
34. It is so Ordered.

DATED, SIGNED, AND DELIVERED IN OPEN COURT AT NAIROBI THIS 18TH DAY OF JULY, 2025.

J.W. KELI,

JUDGE.

IN THE PRESENCE OF:

Court Assistant: Otieno

Appellant/Applicant : - Kamande H/B Angwara

Respondent: Abubakar.

