



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**Cheboi v Langat (Miscellaneous Civil Application E002 of 2025)
[2025] KEHC 1077 (KLR) (26 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 1077 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
MISCELLANEOUS CIVIL APPLICATION E002 OF 2025**

JK SERGON, J

FEBRUARY 26, 2025

BETWEEN

LUCY WAMUYU CHEBOI APPLICANT

AND

HILLARY CHERUIYOT LANGAT RESPONDENT

RULING

1. The subject matter of this Ruling is the Motion dated 4th December, 2024 taken out by the applicant whereof she sought for the following Orders:-
 - (i) That this application be certified urgent, service be dispensed with thereof and the same be heard ex-parte in the first instance.
 - (ii) The Applicant herein be granted leave to appeal out of time against the whole Judgment of Honourable F. M. Nyakundi (PM) Delivered on the 5th day of June, 2024 in Kericho Chief Magistrate's Civil Suit No.221 of 2019.
 - (iii) That the draft Memorandum of appeal annexed to the Application be deemed as duly filed and served upon payment of the requisite fees.
 - (iv) That this Honourable Court be pleased to grant a Stay of Execution of Judgment in Kericho CMCC Number 221 of 2019, pending the hearing and determination of this application inter-partes.
 - (v) That this Honourable Court be pleased to grant stay of assessment of costs in Kericho CMCC Number 221 of 2019, pending the hearing and determination of the intended Appeal.
 - (vi) That upon grant of prayers No.2 and 3 above, this Honourable Court be pleased to order that the applicants do provide sufficient security in the form of a suitable Bank Guarantee from a reputable financial institution to secure the Judgment herein of Kshs.1,053,550/=.



- (vii) That costs of this Application be in the cause.
2. The Applicant filed an Affidavit she swore in support of the Application. The Respondent on her part filed a Replying Affidavit she swore to oppose the Motion.
 3. The Applicant averred that Judgment was delivered on the 5th June, 2024 in the presence of Mr. Nyambane a Learned Advocate who represented her while working in the Law Firm of Kimondo Gachoka & Co., Advocates. The Applicant that Mr. Nyambane resigned from the employment of the aforesaid Law Firm without disclosing the delivery of Judgment.
 4. It is the submission of the Applicant that she came to know of the delivery of Judgment when she was served with a Notice of Taxation by which time the time to appeal had lapsed.
 5. It is the Applicant's submission that she desires to appeal against the decision of the trial hence the need to seek for leave to appeal out of time. She urged this court to grant her leave to appeal out of time and an order for Stay of Execution of the Trial Court's decree.
 6. The Respondent on her part opposed the Application and averred in the Replying Affidavit that the delay in bringing the Application was unreasonable. She also stated that the offer of a Bank Guarantee is unreasonable.
 7. The Respondent further pointed out that the Applicant filed the instant Application as a delaying tactic to stall the process of Execution of a lawful Judgment.
 8. In determining an Application for leave to appeal out of time, the Court has to be satisfied that the Applicant has offered sufficient reason for his or her delay in filing the Appeal within the prescribed time.
 9. An Applicant must also show that the delay was not inordinate.
 10. In the instant Application, the Applicant has stated that the delay to file the appeal was due to mistake of Counsel. It is said that the Advocate who attended Court at the time of delivery of Judgment resigned and left the law firm of Kimondo Gachoka & Co., Advocates without informing the law firm that Judgment had been delivered. It is curious to note that the Applicant did not disclose when Mr. Nyambane resigned.
 11. It is clear from the record that Judgment was delivered on 5th June, 2024 while the instant application was filed on 4th December, 2024. The Application was filed after the lapse of 6 months.
 12. It is alleged that the applicant came to know of the delivery of Judgment when she was served with a Notice of Taxation of the Party to Party Bill of Costs. Again, the applicant did not indicate when she was served with the Notice of Taxation dated 26th June, 2024.
 13. In the absence of a cogent explanation for the delay, I find that the instant Application was filed after an inordinate delay. There is also no clear explanation that the cause of the delay was a genuine Advocate's mistake.
 14. In the end, I am not satisfied that the Applicant gave plausible justification for the delay. In any case, the delay was unexplained and inordinate.
 15. Consequently, the application for leave to file an Appeal out of time is found to lack merit. The same is dismissed.
 16. Having failed to obtain leave to file an Appeal out of time, I find no reason to consider the Application for Stay of Execution of the Judgment of the Trial Court. Even if this Court was to consider the prayer



for Stay of Execution, I am not convinced that the Applicant demonstrated the substantial loss she would suffer if the order for Stay was denied.

17. The end result is that the Motion dated 5th December, 2024 is without merit. It is dismissed with costs to the Respondent.

DELIVERED, SIGNED AND DATED AT KERICHO THIS 26TH DAY OF FEBRUARY, 2025.

.....

J.K. SERGON

JUDGE

In the Presence of:-

C/Assistant – Rutoh

Ongwacho for the applicant

No Appearance for the Respondent

