



REPUBLIC OF KENYA



**Kabiru & another v Ohuru (Civil Miscellaneous E034 of 2025)
[2025] KEHC 4749 (KLR) (Civ) (27 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 4749 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

CIVIL MISCELLANEOUS E034 OF 2025

TW CHERERE, J

MARCH 27, 2025

BETWEEN

PATRICK KABIRU 1ST APPLICANT

ROSE MUHONJA 2ND APPLICANT

AND

GEORGE OHURU RESPONDENT

RULING

Background

1. This application is brought by the Applicant under Order 22 Rule 22, Order 42 Rules 4, 6, and 7, Order 51 Rules 1 and 3 of the Civil Procedure Rules, Sections 3 and 3A of the *Civil Procedure Act*. The Applicant seeks the following orders:
 1. Leave to appeal the judgment delivered on 19th September 2024 in Milimani CMCC No. E5369 of 2022
 2. Stay of execution of the judgment pending the hearing and determination of the intended appeal.
2. The application is supported by an affidavit sworn on 17th January 2025 by Magero Obadiah, an advocate for the Applicant. In the affidavit, the Applicant contends that:
 1. They are aggrieved by the judgment delivered on 19th September 2024 in Milimani CMCC No. E5369 of 2022 and intend to appeal the decision.
 2. They will suffer substantial loss if a stay of execution is not granted.



3. The Respondent's advocates, despite being served, neither filed a response nor attended the hearing of the application.
4. Upon consideration of the application, the arguments presented, and the absence of any opposition, the Court the issues for determination are as follows:
 1. Whether the Applicant should be granted leave to appeal the judgment delivered on 19th September 2024 in Milimani CMCC No. E5369 of 2022.
 2. Whether the Applicant has demonstrated sufficient grounds for granting a stay of execution of the judgment pending the hearing and determination of the intended appeal.
5. The impugned judgment was delivered on 19th September 2024, and the application was filed on 17th January 2025, resulting in a delay of approximately four months.
6. The Applicant has not explained the delay in bringing the current application. As established in *Nguruman Limited v. Jan Bonde Nielsen & 2 Others* [2014] eKLR, KEHC 1718 (KLR), the delay in making an application must be adequately explained.
7. The Applicant here has failed to explain the delay. In the absence of a clear and reasonable explanation, the Court is left to conclude that the delay undermines the urgency of the application.
8. In *RWW v EKW* [2019] KEHC 6523 (KLR), the Court emphasized the need for the Applicant to show substantial loss. Additionally, *Nguruman Limited v. Jan Bonde Nielsen & 2 Others* (supra) reinforces that it is not sufficient to merely claim substantial loss without substantiating it with evidence.
9. The Applicant has argued that substantial loss will be suffered if the stay of execution is not granted. However, the Applicant has not sufficiently demonstrated or substantiated the nature of this loss.
10. The principle of substantial loss is central to the granting of a stay of execution. The Applicant must show that the loss to be suffered cannot be adequately compensated by an award of damages or that it would be irreversible.
11. In this case, while the Applicant has stated the potential for substantial loss, there is no clear evidence to substantiate this claim.
12. Further, the failure to provide specific details on how the execution of the judgment would result in irreparable harm weakens the argument for the grant of a stay.
13. The requirement for a stay of execution is not merely procedural but is anchored in the possibility of irreparable loss if execution proceeds.
14. In light of the Applicant's failure to sufficiently demonstrate substantial loss and the unexplained delay in filing the application, the application before the court lacks merit.
15. For the reasons outlined above:
 1. The prayer for leave to appeal the judgment delivered on 19th September 2024 in Milimani CMCC No. E5369 of 2022 is disallowed.
 2. The prayer for a stay of execution is equally disallowed.

DELIVERED AT NAIROBI THIS 27TH DAY OF MARCH 2025



WAMAE.T. W. CHERERE

JUDGE

Appearances

Court Assistant - Ubah

For Applicant - Mr. Magero for Kimondo Gachoka & Co. Advocates

For Respondent - N/A for Shem Kebongo & Co. Advocates

