



REPUBLIC OF KENYA



**KENYA LAW**  
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**Michael v Machuki (Civil Appeal 136 of 2025)  
[2025] KEHC 3809 (KLR) (Civ) (27 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 3809 (KLR)

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

**CIVIL**

**CIVIL APPEAL 136 OF 2025**

**JN MULWA, J**

**MARCH 27, 2025**

**BETWEEN**

**TITUS KIOKO MICHAEL ..... APPELLANT**

**AND**

**CLINTON MACHUKI ..... RESPONDENT**

**RULING**

1. The trial court, SCCC No. 1691 of 2023 in its judgment delivered on 16/08/2023 awarded the claimant therein a sum of Kshs. 551,183.61/= as shown in the decree issued on 16/08/2023.
2. Being dissatisfied, the appellant herein preferred an appeal by a Memorandum of Appeal dated 17/02/2025 based on both liability and quantum of damages seeking that the judgment be set aside and costs be awarded to the Appellant both in the trial court and in this Appeal.
3. By an application dated 17/02/2025, the appellant approached the court seeking:-
  - a. An order of stay of execution pending hearing and determinant of the appeal;
  - b. An order of leave to file an appeal out of time.
4. The above is premised upon Section 1A, 1B and 3A of the *Civil Procedure Act*, (CPA) and Orders 51 Rule 1; Order 22 Rule 6 and 22 of the Civil Procedure Rules (CPR); upon grounds as stated in the draft Memorandum of Appeal, arguing that denial of the stay orders will cause irreparable loss to the applicant, in that his freedom and liberty will be threatened as the decretal sum is colossal and such would not be remedied by costs.
5. The Applicant in his Supporting Affidavit sworn on an even date repeats the same averments and statements.



6. In opposition to the application, the Respondent relies on his Supporting Affidavit sworn on 26/02/2025. His deposition is that the application was filed 18 months after judgment was delivered as well as the Memorandum of Appeal that was filed out of time and without leave of court. It further deposed that before this motion, the applicant had filed three other similar applications which were dismissed, noting that at the trial court, judgment on liability was entered by consent between the applicant and the respondent before the court on 16/08/2023 at the ratio 85:15 in favour of the Respondent, upon which the court assessed general damages to the tune of Kshs. 606,200/= less 15% plus cost to the Respondent.
7. For the foregoing the Respondent deems the intended appeal to be an afterthought and an abuse of court process.
8. The court notes that the applicant was served with a NTSC in an attempt to execute the decree which he has failed to settle arguing that his vehicle's insurer at date of accident, XPlico Insurance Company Ltd by a letter dated 27/03/2024 explained that it was under statutory management and therefore the decree holder should wait for directions from the policy holders compensation fund to settle the decree. The said letter is exhibit – "CM-5".
9. On 11/03/2025 the applicant in person and the Respondent by his advocate argued the motion before the court. The Respondent argued that he would not oppose the orders sought if the applicant provides security if the full decretal sum is deposited in court as security.
10. The Applicant in response urged that the respondent ought to wait for the policyholders fund to settle the decretal sum, and in the alternative, he would deposit his vehicle's long book with the court to await hearing and determination of the Appeal.
11. Upon the above, and having considered the rival arguments, the court notes that the Memorandum of Appeal as filed does not raise any triable issues on the matter of liability the same having been resolved by consent of the parties.
12. On the other hand, the applicant has failed to explain to the court his failure to file the Appeal (Memorandum of Appeal) within the statutory period and what prejudice he would suffer if stay orders are not granted.
13. Order 42 Rule 6(2) of the Civil Procedure Rules mandates any party seeking an order of stay pending appeal to offer sufficient security for the due performance of the decree, and to explain to the court's satisfaction reasons for inordinate delay. Reliance by the Applicant on the letter from this vehicle's Insurer at time of accident cannot be considered at this stage – see *RWW vs. EKW* [2019] eKLR.
14. Further failure by the Applicant to invoke provisions of Section 79G of the *Civil Procedure Act* to satisfy the court of why an order to enlarge time to file the appeal ought to be granted cannot be overlooked. The court has considered the draft memorandum of appeal filed out of time. In the case of *Thuita Mwangi v. Kenya Airways Ltd* [2003] eKLR and *Charles N. Ngugi v. ASL Credit Limited* [2022] eKLR, the courts held that when exercising its discretion on whether to grant or refuse leave to file appeal out of time, it must take into account various issues being those stated at Order 42 Rule 6 CPR including the decree of prejudice which may be suffered by the Respondents if extension is granted.
15. The court finds that the impugned judgment was delivered on 16/08/2023. It was a lawful and regular judgment wherein the applicant participated in the trial.
16. There being no satisfactory grounds upon which the application may be granted, the court proceeds to dismiss the same with costs to the Respondent.



DELIVERED, DATED AND SIGNED IN NAIROBI THIS 27<sup>TH</sup> DAY OF MARCH 2025.

.....

JANET MULWA

JUDGE

