



**Karanja v Micheka (Civil Miscellaneous E921 of 2024)
[2025] KEHC 3744 (KLR) (Civ) (26 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 3744 (KLR)

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

CIVIL

CIVIL MISCELLANEOUS E921 OF 2024

LP KASSAN, J

MARCH 26, 2025

BETWEEN

PENINAH NYAKIO KARANJA APPLICANT

AND

JOEL ONAMI MICHEKA RESPONDENT

RULING

1. Before this court is a Notice of Motion dated 15.09.2024 brought under Article 50(1) and Article 159 Constitution of Kenya, Sections 1A, 1B (1), 3A and 63 (e) of the *Civil Procedure Act*, Order 42 Rule 6, Order 5, Order 10 Rules 11, and Order 51 Rule 1 of the *Civil Procedure Rules* 2010, , and all enabling provisions of the law wherein the Applicant seeks orders to wit:
 - a. Spent
 - b. Spent
 - c. That the Honourable court be pleased to issue an order staying the execution of the judgment the resulting decree and all other proceedings emanating there from and/or any other consequential orders arising from the judgment in Milimani CMCC E1821 of 2022 Peninah Nyakio Karanja T/A Penikar Enterprises-vs-Joel Onami Micheka pending the hearing and determination of the appeal against the judgment of the trial court.
 - d. That the Honourable Court be pleased to grant leave to the applicant to appeal out of time against the ruling of the Honourable S.A. Opande PM in Milimani CMCC E1821 of 2022: Peninah Nyakio Karanja T/A Penikar Enterprises-vs-Joel Onami Michieka dated 22nd July 2024.
 - e. That the costs of this application abide the outcome of the suit.



2. The said application is premised on the grounds on its face and further supported by the affidavit sworn by the Applicant. The Applicant's case is an ex-parte judgment was delivered for Kshs 2,104,418/=, with costs and interest. The Applicant filed an application dated 27.02.2023 seeking to set aside the ex-parte judgment. Directions were given that the said application be heard on 13.03.2023 before the trial court. On 13.03.2023, the Applicant was logged in and the matter was not called out. At the end of the session, the court advised the Applicant to take another date at the registry. Upon following up on the file, the same could not be traced. The said file had been placed before a different court which issued orders for dismissal for non-attendance. Attempts to request the file to be placed before the trial court to reinstate the said application was hindered as the file could not be traced. The Applicant filed another application dated 28.02.2023 for reinstatement but was dismissed. The Applicant filed a notice of appeal and followed up on the copy of the proceedings. She appointed counsel to represent her. The 30 days leave to appeal had lapsed necessitating the filing of this application. The Respondent was in the process of execution of the ex-parte judgment. That the Respondent would not suffer any prejudice or damage that cannot be compensated by way of costs if the present application is allowed. It is in the interest of justice and safeguarding of the Applicant's constitutional right to be heard. There has been no undue delay in bringing this application.
3. The application is premised on alleged irregularities in service, denial of a fair hearing, and procedural mishaps in the lower court. The Respondent opposes the application, asserting that the Applicant is intent on delaying justice.
4. The application was canvassed by way of written submissions.

Applicant's submissions

5. The Applicant submitted that the delay (10 days beyond the 30-day limit) is attributed to her status as a self-represented litigant and confusion over appeal timelines. She cited the cases of [*Paul Njage Njeru vs. Karija K. Mugambi*](#) (2021) and [*Andrew Kiplagat Chemaringo v Paul Kipkotr Kibet*](#) (2018), emphasizing that courts may extend time if the delay is plausibly explained. On the issue of stay of execution, she argues she meets the criteria under Order 42 Rule 6 of the [*Civil Procedure Rules*](#): first, there was no undue delay as the application herein was filed promptly after securing legal representation. Second, she would suffer substantial loss if the application is not allowed as the appeal risks being rendered nugatory if execution proceeds, as the judgment amount is "trumped up" and untested in a fair trial. Lastly, security she was willing to comply with court-ordered security. She submitted that there were violations of her constitutional right to a fair hearing (Article 50(1)) and asserted the ex-parte judgment denied her a chance to defend herself. The Applicant urges the court to grant relief to prevent a miscarriage of justice, stressing that the respondent would not be prejudiced by a proper trial.

Respondent's submissions

6. The Respondent asserts the Applicant's application herein is frivolous, vexatious, and intended to delay justice. The Applicant was served all relevant documents (summons, plaint, affidavits, hearing notices) via email (pennykaranja@yahoo.com) in 2022–2023. Affidavits of service confirm delivery. The Applicant's claim of non-service is dismissed as false, given her admission of attending court on 13th March 2023 (albeit the wrong court). The Applicant's earlier application (dated 27th February 2023) to set aside an interlocutory judgment and file a defense was dismissed on 13th March 2023 for lack of prosecution. A decree for KShs. 2,104,418/= (including interest and costs) was issued on 4th July 2023. The Respondent emphasizes the Applicant's refusal to settle despite awareness of the decree. Execution efforts (via auctioneers) are ongoing, but the Applicant continues to delay through



unwarranted applications. If the court allows the appeal, the Respondent demands the Applicant deposit the full decree amount as security to safeguard the Respondent's rights. The Respondent urged the court to dismiss the Applicant's application to file an appeal out of time and order the Applicant to immediately pay KShs. 2,104,418/= per the decree with costs of the application to the Respondent.

Analysis & Determination

7. I have considered the Application, responses and the submissions filed herein. The main facts relating to the Application herein are not in dispute. These include the existence of the ruling in Nairobi CMCC No. E1821 of 2022 delivered on 22.07.2024 in favour of the Respondent.
8. The issues for determination herein are
 - i. Whether the Applicant herein should be granted leave to appeal out of time against the judgment in Nairobi CMCC No.E1821 of 2022?
 - ii. Whether to grant stay of execution in CMCC E1821 of 2022 pending the hearing and determination of the appeal?
 - iii. Who should bear the costs?
9. Section 79G of the *Civil Procedure Act* provides that the appeals from the subordinate court to the High Court must be filed within a period of 30 days from the date of the decree or order from which the appeal lies. It provides:

“Every appeal from a subordinate court to high court should be filed within a period of thirty days from the date of the decree or order appealed against, From such period any time the lower court may certify as having been requisite of a copy of the or order. Provided that an appeal may be admitted out of time if the appellant satisfied the court that he had good and sufficient cause for the filing of the appeal in time.”
10. It allows for the extension of time within which an appeal ought to be filed is a matter of judicial discretion. An applicant seeking enlargement of time to file an appeal must show that he has a good cause for doing so.
11. The court in exercise of its discretion is supposed to take into account the length of the delay, the reason for the delay, the chances of the appeal succeeding if the application is granted, the degree of prejudice to the Respondent if the application is granted and whether the matter raises issues of public importance. (See Court of Appeal in Edith Gichungu Koine-vs-Stephen Njagi Thoithi (2014) eKLR).
12. In addition, Section 95 of the *Civil Procedure Act* grants to the court the “discretion, from time to time, to enlarge” any time fixed for the doing of any act under the Act. See also, Order 50 Rule 6 of the Civil Procedure Rules. Thus it is incumbent upon the Applicant to satisfy the court that it had good and sufficient cause for not filing the appeal in time, and is deserving of the court's discretion.
13. The ruling in the primary suit Nairobi CMCC No. E1821 of 2022, was delivered on 22.07.2024. The ruling dismissed the Applicant's prayer to reinstate the earlier dismissed application seeking to set aside the ex-parte judgment. The application herein was filed about 24 days after the 30 days leave to appeal had lapsed. The explanation given is the Applicant tried to trace the file and acquire proceedings. This can't be attributed in any way to a party. After being unsuccessful she sought representation from counsel to file this application. In light of this, the delay in bring the application herein although inordinate is with reason.



14. As to whether the Respondent will suffer any prejudice, this has to be weighed against a party's constitutional right to be heard (See Court of Appeal case *Vishva Stone Suppliers Company Limited-vs-RSR Stone (2006) Limited* (2020) eKLR.). The Applicant deposed that the Respondent will not suffer any prejudice if the orders of leave are granted. The Applicant has expressed her chances of appeal succeeding. The Respondent's deposition as to the prejudice he will suffer cannot dislodge the clear prejudice the Applicant stands to suffer.
15. Where a party is aggrieved and wishes to pursue an appeal it would be fair to exercise discretion in his/her favour and especially where the delay in filing the appeal is not inordinate and the adverse party will not be prejudiced in any way. The discretion of the court must always be exercised judiciously. The Applicant having expressed her intentions to be heard by this court on appeal, it is my considered view that she ought to be given an opportunity to pursue the appeal.
16. For the above reasons, the Applicant has satisfied the conditions for grant of leave to appeal out of time.
17. The prayer for leave to file an appeal having been allowed, this court will then proceed to determine the issue as to whether there ought to be stay of execution of the judgment of the trial court pending the hearing and determination of the appeal. The principles upon which the above prayer can be allowed are now well settled from the authorities from this court and from the superior courts.
18. Generally, a stay of execution is provided under Order 42 Rule 6 of the *Civil Procedure Rules* 2010 which provides:

“Notwithstanding anything contained in subrule (1) of this rule the High Court shall have power in the exercise of its appellate jurisdiction to grant a temporary injunction on such terms as it thinks just provided the procedure for instituting an appeal from a subordinate court or tribunal has been complied with.”
19. For orders of stay of execution to be granted, the Applicant must satisfy the conditions to wit that substantial loss may result to the Applicant unless the order is made; that the application has been made without undue delay; and that 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 See *Amal Hauliers Limited-vs-Abdulnasi Abukar Hassan* (2017) eKLR.
20. The court ought to fairly take into account the interests of the Respondent, who has been deprived of the benefits of his judgment, in addition to the Appellant's right to ventilate their case which the court should not be quick to deny. See *Kenya Shell Ltd. v. Kibiru & others* (Supreme); *Attorney General v. Halal Meat Produces Limited*, Civil Application No. Nairobi 270 of 2008; and *Mukuma v. Abuoga* (1988) KLR 645.
21. Where the Applicant is successful, he or she shouldn't be in a position where he or she can't obtain their money back. Additionally, if the Applicant ultimately fails in his intended appeal, the Respondent who has a decision in his favour shouldn't find it difficult or impossible to enforce the decree. This is the guarantee security of costs gives to parties. See *Nduhiu Gitabi & Ano.-vs-Anna Wambui Warugongo* (1988) 2 KLR 100.
22. Taking all relevant factors into consideration, I do order that;
 - a. The Applicant is granted leave to file an appeal out of time and the same must be filed and served within the next 21 days from the date of this ruling.



- b. The Applicant will deposit half of the decretal sum into an interest earning account in the joint names of the parties' advocates within 30 days from this Ruling date.
- c. In default of any of these conditions, this application shall be deemed to have been dismissed with costs and the Respondent shall be at liberty to execute.
- d. The costs of this Application will be in the cause.

23. It is so ordered.

DELIVERED, DATED AND SIGNED AT NAIROBI THIS 26TH DAY OF MARCH 2025.

HON. L. KASSAN

JUDGE

In the presence of;

Mwangi for the Applicant

Okelo holding brief Arasa for the Respondent

Carol – Court Assistant

