



REPUBLIC OF KENYA



**Express Connections Limited & another v Muchai (Civil Appeal  
E1266 of 2023) [2025] KEHC 12216 (KLR) (Civ) (29 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 12216 (KLR)

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

**CIVIL**

**CIVIL APPEAL E1266 OF 2023**

**TW CHERERE, J**

**MAY 29, 2025**

**BETWEEN**

**EXPRESS CONNECTIONS LIMITED ..... 1<sup>ST</sup> APPELLANT**

**MICHAEL MICHIEKA ..... 2<sup>ND</sup> APPELLANT**

**AND**

**FRANCIS MUCHAI ..... RESPONDENT**

**RULING**

1. By Notice of Motion dated 25<sup>th</sup> February 2025, the Appellant seeks the following reliefs:
  1. Stay of execution of the judgment delivered on 30<sup>th</sup> June 2023 in MCCC E13542 of 2021 pending determination of the appeal;
  2. Reinstatement of the appeal;
  3. Costs to abide the outcome of the appeal.
2. The application is brought pursuant to Sections 1A, 1B, 3A, and 95 of the *Civil Procedure Act*, and Orders 45 Rule 1, 50 Rule 6, and 51 Rule 1 of the *Civil Procedure Rules*.
3. The application is supported by an affidavit sworn on 25<sup>th</sup> February 2025 by Lawrence Njuguna Advocate and on the grounds that:
  - (1) Judgment in milimani MCCC E13542 OF 2021 was rendered on 30<sup>th</sup> June 2023
  - (2) Appellants deposited KES. 316,775 in court as a condition for stay of execution



- (3) The appeal was dismissed on 23<sup>rd</sup> January 2025 because the Appellants had not filed the record of appeal owing to the unavailability of the judgment, decree, and proceedings from the lower court
4. The Respondent opposed the application by a replying affidavit sworn by Musili Mbiti advocate on 12<sup>th</sup> May 2025 and on the grounds that:
  - (1) There is no explanation for failure to file the record of appeal
  - (2) The appeal is already dismissed and this application is an afterthought

### Issues for Determination

5. I have carefully considered the application in light of the supporting affidavit and annexures thereto and the replying affidavit on record and the following issues call for determination:
  1. Whether the delay in filing the record of appeal is sufficiently explained and excusable
  2. Whether the application for stay of execution

### Analysis and determination

#### 1. Explanation for Delay in Filing the Record of Appeal

6. The reinstatement of an appeal and stay of execution remain matters within the discretion of the court, to be exercised judiciously in light of the overriding objective of substantive justice and the facts of each case. Sections 1A and 1B of the *Civil Procedure Act* articulate this objective, encouraging the court to resolve matters on their merits rather than technicalities. However, this discretion is not unfettered and must balance the competing interests of both parties.
7. Order 42 Rule 2 of the *Civil Procedure Rules* mandates that:

“Where no certified copy of the decree or order appealed against is filed with the memorandum of appeal, the appellant shall file such certified copy as soon as possible and within such time as the court may order.”
8. This provision allows for the filing of an initial record and subsequently filing supplementary documents once available.
9. It is well established in our jurisprudence that failure to file records within the stipulated time, leading to dismissal of an appeal, can be remedied only upon the appellant satisfying the court with a sufficient and satisfactory explanation for the delay.
10. The Court’s position in *Bernard Muthee & Another v Anita Kamba Mwiti* [2021] eKLR is instructive here, where it was observed:

“It is not enough to make mere averments devoid of supporting evidence. The appellant must show that genuine efforts were made to obtain the records within a reasonable period.”
11. As was emphasized in *Ivita v Kyumbu* (1975) EA 441, 449, the test is whether the delay is prolonged and inexcusable, and, if it is, can justice be done despite such delay. The defendant must however satisfy the court that he will be prejudiced by the delay or even that the plaintiff will be prejudiced.



12. In the instant case, the judgment was delivered on 30<sup>th</sup> June 2023, yet the appeal remained dormant until its eventual dismissal over nineteen months later. The Appellant attributes the delay to the unavailability of the judgment, decree, and proceedings, supporting this assertion by letters dated 09<sup>th</sup> July 2024 and 26<sup>th</sup> November 2024 requesting for the same. However, these correspondences do not rise to the threshold of evidence required to demonstrate persistent, active, and continuous efforts to obtain the necessary records. The intervening period of over one year from the delivery of judgment on 30<sup>th</sup> June 2023 to the initial documented request in July 2024 reveals a troubling gap that is unexplained by the Appellant.
13. Furthermore, while the present application was filed just over a month after the dismissal of the appeal on 23<sup>rd</sup> January 2025, that promptness does not remedy the prolonged delay of over a year that preceded it.
14. This Court reiterates that unexplained delays disrupt the orderly administration of justice and cannot be overlooked. Litigants are expected to be diligent in safeguarding their appellate rights, and this Court cannot countenance indolence in the pursuit of justice.
15. This Court fully appreciates the constitutional imperative of access to justice. However, that right does not extend to shielding litigants from the consequences of negligence or indolence. It must be balanced with the equally important duty to administer justice promptly and efficiently.
16. Based on the above, I conclude that the Appellants have not provided sufficient material for the court to properly exercise its discretion to reinstate the appeal.

## **2. Whether an order of stay execution should be granted**

17. Given that the appeal has been dismissed in accordance with established principles, the application for stay of execution lacks the necessary foundation and must consequently fail.

### **Disposition**

18. From the foregoing analysis, the notice of motion dated 25<sup>th</sup> February 2025 is disallowed with costs to the Respondent.

**DELIVERED AT NAIROBI THIS 29<sup>th</sup> DAY OF May 2025**

**WAMAE.T. W. CHERERE**

**JUDGE**

Appearances

Court Assistant - Ruth

For Appellants - Mr. Magero hb for Njuguna for Kimondo Gachoka & Co. Advocates

For Respondent – N/A for Musili Mbiti Advocates LLP

