



REPUBLIC OF KENYA



KENYA LAW
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**Kamau v Bisonga (Civil Miscellaneous E331 of 2025)
[2025] KEHC 12210 (KLR) (Civ) (29 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 12210 (KLR)

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

CIVIL

CIVIL MISCELLANEOUS E331 OF 2025

TW CHERERE, J

MAY 29, 2025

BETWEEN

PETER KAMAU APPLICANT

AND

JARED BISONGA RESPONDENT

RULING

“Justice is not bound by time, but by the integrity of the process that seeks to uphold it.”

1. Before this Court is a Notice of Motion dated 12th March 2025 brought under the provisions of Sections 1A, 1B, 3A, and 79G of the *Civil Procedure Act* (Cap 21), Order 51 Rule 1 and Order 42 of the Civil Procedure Rules, 2010, and Article 159 of *the Constitution* of Kenya. The Applicant seeks the following orders;
 - 1) Leave to file an appeal out of time against the judgment in SCCCOMM E11834 of 2024 delivered on 29th October 2024
 - 2) A stay of execution of the said judgment
 - 3) That the costs of this application be in the cause.
2. The Respondent, though duly served on 24th March 2025, neither filed a response nor appeared in Court. The application is thus unopposed.

Issues for Determination

3. I have carefully considered the application in light of the supporting affidavit and identified the following issues for determination:



1. Whether the Applicant has made out a case for leave to file an appeal out of time
2. Whether the Applicant is entitled to a stay of execution of the judgment in SCCCOMM E11834 of 2024 delivered on 29th October 2024

1. Leave to Appeal Out of Time

4. Section 79G of the *Civil Procedure Act* provides:

“Every appeal from a subordinate court to the High Court shall be filed within a period of thirty days... Provided that the appellate court may extend the time for filing the appeal if satisfied that the appellant had good and sufficient cause for not filing the appeal in time.”

5. In *Leo Sila Mutiso v Rose Hellen Wangari Mwangi* [1999] 2 EA 231, the Court of Appeal held that the decision to extend time is discretionary and should be guided by the length of the delay, the reason for it, the chances of success of the intended appeal, and the degree of prejudice to the Respondent.
6. Similarly, in *Nicholas Kiptoo Arap Korir Salat v Independent Electoral and Boundaries Commission & 7 Others* [2014] eKLR, the Supreme Court emphasized that an application for extension of time is a discretionary and equitable remedy. The Court outlined key factors to guide this discretion, including the reason for the delay, the length of the delay, the arguability of the appeal, the degree of prejudice to the respondent, and whether the application was made without undue delay. The decision reinforced that extension of time is not a right, but a matter for the court’s discretion based on the circumstances of each case.
7. The judgment in question was delivered on 29th October 2024. This application was filed on 12th March 2025, approximately four and a half months later. Although the Applicant has not explained the delay, he has annexed a draft memorandum of appeal that discloses arguable grounds.
8. Article 50(1) of *the Constitution*, which guarantees the right to a fair hearing, and the judicial inclination to have disputes resolved on their merits, weigh in favour of granting leave.

2. Stay of Execution

9. The Applicant seeks to stay the execution of a judgment that dismissed its claim.
10. In *Co-operative Bank of Kenya Ltd v Banking Insurance & Finance Union (Kenya)* [2016] KECA 97 (KLR), the Court held:

“A negative order is incapable of being stayed as there is nothing to be executed.”
11. Similarly, in *Western College of Arts and Applied Sciences v EP Oranga & Others* [1976] KECA 15 (KLR), the Court held:

“There is nothing arising out of a dismissal that can be stayed since it does not grant any positive relief.”
12. The only executable aspect of the judgment is costs. The Applicant, however, has not demonstrated that payment of costs would occasion substantial loss.

Disposition

13. In conclusion, the Court makes the following orders:



1. Leave is granted to the Applicant to appeal out of time against the judgment in SCCCOMM E11834 of 2024 delivered on 29th October 2024
2. The intended appeal shall be filed within fourteen (14) days from the date of this ruling
3. The prayer for stay of execution is declined
4. Costs of this application shall be in the cause.

DELIVERED AT NAIROBI THIS 29th DAY OF May, 2025

WAMAE.T. W. CHERERE

JUDGE

Appearances

Court Assistant - Ruth

For Appellant - Mr. Muniyiri for Odero Owuor & Associate Advocates

For Respondent - N/A for Chitala B & Co. Advocates

