



REPUBLIC OF KENYA



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Maps Investments Limited v Rafiki Micro Finance Bank & 2 others (Miscellaneous Application E028 of 2025) [2025] KEHC 6891 (KLR) (28 May 2025) (Ruling)

Neutral citation: [2025] KEHC 6891 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
MISCELLANEOUS APPLICATION E028 OF 2025
RN NYAKUNDI, J
MAY 28, 2025**

BETWEEN

MAPS INVESTMENTS LIMITED APPELLANT

AND

RAFIKI MICRO FINANCE BANK 1ST RESPONDENT

TIMELESS DOLPPIN AUCTIONEERS 2ND RESPONDENT

KEYSIAN AUCTIONEERS 3RD RESPONDENT

RULING

1. By a Notice of Motion dated 6/02/2025 the Applicants seeks the following orders:
 1. Spent.
 2. Spent.
 3. That the Honourable Court be pleased to grant stay of the judgment and decree in Eldoret Chief Magistrate's Court Civil Case No.E911 of 2022, Maps Investments Limited Vs. Rafiki Micro Finance Bank & Another and all consequential orders pending the hearing and determination of the intended appeal preferred therein in the High Court.
 4. That the Honourable Court be pleased to grant leave to the Applicant/Intended Appellant to file the appeal out of time from the judgment in Eldoret Chief Magistrate's Court Civil Case No.E911 of 2022, Maps Investments Limited Vs. Rafiki Micro Finance Bank & Another and be admitted out of time.
 5. That the Memorandum of appeal attached to the application be deemed as duly filed before the Honourable Court.



6. That the Honourable Court be pleased to allow the Applicant/Intended Appellant to furnish Court with security in form of title for Pioneer/Ngeria Block 1(EATEC)/3505 pending appeal, which is more valuable than the suit property (matrimonial property)
 7. That the Honourable Court do admit the Appellant for hearing and issue directions as is necessary for the ends of justice to be met.
 8. That the Honourable Court do issue such other directions and/or orders as the Court may deem just and expedient to grant.
 9. That the costs of this application be in the cause.
2. The application is premised on the grounds therein and it is further supported by the Affidavit sworn by Domiano Wekesa Kong'ani who describes himself as the Applicant's director.
 3. He deposed that he is the registered owner of all that parcel of land known as PIONEER/NGERIA BLOCK 1 (EATEC)/8317 which is the subject matter of the instant application and the intended appeal, that on 15/11/2024, the Court delivered a judgment against him and the Respondents are poised to execute the said judgment against him and have made their intention clear as evidenced by the publication for auction by the 3rd Respondent, while there is an impending ruling of an application before the trial Court scheduled for 19/03/2025.
 4. The Applicant thus seeks stay of execution of the judgment delivered by the Court on 15/11/2024 pending the hearing of this instant application and the intended appeal.
 5. The Applicant deposed that the trial Court delivered judgment in favour of the 1st Respondent directing that he pay and/or make a private sale of the suit land, or any further agreement with the 1st Respondent. The Applicant further deposed that he made a proposal to the 1st Respondent's Eldoret main branch but they did not respond to his request in light of his financial constraints and challenges of hosting his two elderly sick parents.
 6. The Applicant contended that his previous Advocates did not follow his instructions to file a Memorandum of Appeal against the judgment when his father died on 23/11/2024. The Applicant maintained that he consulted his previous Advocates on record with regard to the remedies available to him with regard to the said judgment and the Advocate agreed to file an appeal but later in December 2024, he realized that the said Advocate had not filed the appeal forcing him to approach the Court with the instant application.
 7. In addition, the Applicant deposed that on 15/01/2025, he made a deposit of Kshs.70,000/= in good faith hoping to come out of the financial constraint due to the huge medical bills for his late parents.
 8. The Applicant seeks leave to appeal against the said judgment out of time. The Applicant is aggrieved and dissatisfied with the judgment of the Court and wishes to prefer an appeal against the whole judgment.
 9. According to the Applicant, mistakes such as the one which occurred of his previous Advocates not filing the appeal are indeed mistakes but the door of justice should not be closed on him and that the Court should do whatever is necessary to remedy the same.
 10. The Applicant is apprehensive that unless an order of stay of execution is issued then the intended appeal will be rendered nugatory. The Applicant has complied with the condition for grant of stay pending appeal by providing security of depositing the title in Court. The Applicant is willing to



continue paying Kshs.70,000/= from 15/01/2025 pending the hearing of this instant application and the intended appeal as he had proposed to the 1st Respondent in restructuring the loan facility.

The Response

11. The Application is opposed by the 1st Respondent vide the Replying Affidavit sworn by Isaiah Kanda on 26/02/2025, the Respondent's Senior Relationship Officer.
12. He deposed that the instant application is misplaced, misconceived, lacking in bona fides and is otherwise an abuse of Court process with the sole aim of prolonging the suit beyond the sound judgment of the trial Court and further the 1st Respondent's recovery efforts through the 2nd and 3rd Respondents herein and should therefore be struck out with costs.
13. He contended that the instant application does not conform to the requirements of Order 9 Rule 9 of the Civil Procedure Rules, 2010 and further that it is incompetent and the purported drafter and deponent of the motion application and the accompanying Supporting Affidavit, respectively is not properly on record and or is a stranger to the Cause as there is no prayer on record seeking such leave, contrary to the provisions of Order 9 Rule 10 of the Civil Procedure Rules, 2010.
14. He further contended that as an artificial person, the Applicant being a company, cannot represent itself in legal proceedings and that it can only be represented before the Court by an Advocate or firm of Advocates and not by a member or director of the company, or any other person as in the case herein and thus the Court should strike out the current application with costs. Additionally, he deposed that even if the Court was to find that the Applicant can represent itself in Court proceedings then there is no consent between the Applicant herein and its outgoing Advocates contrary to the set legal procedure under Order 9 Rule 9 (b) of the CPC.
15. He further deposed that prayer (f) of the application as read with the contents of paragraph 19 of the Supporting Affidavit is not only untenable, the same is equally misplaced as the Applicant is inviting this Court to rewrite contract between the parties.
16. He maintained that while the Applicant is claiming that the suit property is not only home for him but also his family, the charger is alive to the fact that having pledged it as security for the loan facility, the same will be sold in the event he fails to regularize the borrower's account after the lapse of 45 days' stay period the Court granted via the judgment of 15/11/2024. He further contended that the Applicant has not paid the sums outstanding to date, instead it intends to prolong the interim orders it has been enjoying since the inception of the suit. According to the 1st Respondent, the Applicant has approached this Court with unclean hands and is not deserving of the orders at all.
17. In view of the appeal being rendered nugatory, he deposed whereas it is trite legal principle that the nugatory limb is meant to prevent a situation where a successful appeal is rendered an academic exercise because of harm, loss or prejudice has already occurred during the intervening period, the grounds of the intended appeal herein do not raise triable issues on appeal but instead the Applicant intends to introduce new issues at the appellate stage.
18. According to the 1st Respondent if stay is not grant the damages will reasonably compensate the Applicant.
19. The 1st Respondent maintained that the Applicant has not met the conditions essential for grant of orders of stay pending appeal, as envisaged under Order 42 Rule 6 (2) of the CPC, 2010, that the Applicant's application does not meet the set parameters for grant of extension of time to appeal and leave to appeal out of time as the Applicant has not furnished a satisfactory explanation for the delay and that allowing the same will greatly prejudice the 1st Respondent.



The Submissions

20. The application was canvassed vide written submissions. The Applicant filed submissions on 20/03/2025 while the Respondents did not file any.

The Applicant's Submissions

21. With regard to leave to file appeal out of time, the Applicant cited Section 79 (G) of the *Civil Procedure Act* and the case of *Karny Zaharya & Another vs. Shalom Levi* [2018] eKLR. The Applicant submitted that the judgment in the trial Court was delivered on 15/11/2024 and the present application was filed 12 days later on 4/02/2025. The Applicant maintained the delay was occasioned by the previous Advocates who didn't take instructions as given by the manager of the Applicant. The Applicant further submitted that its manager was bereaved and it knew that its previous Advocates had filed the appeal on the issues that were not handle by the trial Court especially the in duplum rule, which was casually handled by the trial Court. The Applicant urged that the delay in making the appeal and the application was occasioned by the fact that the 30 days' period lapsed when the offices has been closed for the festive season thereby posing a challenge in getting the file from the previous Advocates who has been instructed to file the application for stay and appeal and that the prayer to file the appeal out of time can only be accepted if he satisfies the Court that he had good and sufficient cause for not file appeal in time.
22. Regarding the principles of stay of execution pending appeal, the Applicant cited Order 42 Rule (2) of the Civil Procedure Rules. The Applicant is apprehensive that in the vent that the Respondents proceeds with execution, its intended appeal will rendered nugatory.
23. Regarding undue delay, the Applicant submitted that the Application was made without undue delay, the judgment was delivered on 15/11/2024 and the instant application was filed without undue delay.
24. On substantial loss, Counsel cited the case of *James Wangala & Another Vs. Agnes Naliaka Cheseto*. The Applicant submitted that it has demonstrated that substantial loss may occur on its part in the event stay of execution is not granted, that the Respondents may commence execution pending the hearing of the intended appeal. The Applicant added that Auctioneers visited its premises with a publication to auction the suit property.
25. Regarding security, the Applicant submitted that it is willing to deposit the title deed in Court which had high value than the suit charged property for the decree as security and is ready to abide by any conditions that may be imposed by the Court with regard to granting stay of execution. The Applicant relied on the case of *Focin Motorcycle Co. Ltd Vs. Ann Wambui Wangui & Another* [2018] eKLR and also the case of *Gianfranco Manenthi & Another Vs. Africa Merchant Assurance Co. Ltd* [2019] eKLR
26. Regarding the delay occasioned by the Applicant's previous Advocates in filing the appeal on time. The Applicant relied on the case of *Philip Kiptoo Chemwolo & another v Augustine Kubende* [1986] eKLR relied upon by the appellant and in which the Court of Appeal rendered itself as follows:

“Blunders will continue to be made from time to time and it does not follow that because a mistake has been made that a party should suffer the penalty of not having his case determined on its merits.”



Determination

27. I have given due consideration to the pleadings and submissions filed in this application. The issue for determination is whether the Applicants' prayer for extension of time and stay of execution should be granted.

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

Every appeal from a subordinate court to the High Court shall be filed within a period of thirty days from the date of the decree or order appealed against, excluding from such period any time which the lower court may certify as having been requisite for the preparation and delivery to the appellant of a copy of the decree or order:

Provided that an appeal may be admitted out of time if the appellant satisfies the court that he had good and sufficient cause for not filing the appeal in time.

29. In the case of *Salat v Independent Electoral & Boundaries Commission & 7 others* [2014] KLR-SCK, the Court held as follows on extension of time to file an appeal out of time:

1. Extension of time is not a right of a party. It is an equitable remedy that is only available to a deserving party at the discretion of the Court;
2. A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the court;
3. Whether the court ought to exercise the discretion to extend time, is a consideration to be made on a case to case basis;
4. Whether there is reasonable reason for the delay, which ought to be explained to the satisfaction of the Court;
5. Whether there would be any prejudices suffered by the respondents if the extension was granted;
6. Whether the application had been brought without undue delay; and;
7. Whether in certain cases, like election petitions, public interest ought to be a consideration for extending time.

30. The time stipulation is a requirement of the law as clearly stated in Section 79 G of the *Civil Procedure Act*. In short, parties cannot, either unilaterally or by agreement between them, metaphorically, waive away the rules of the Court. The rules of the Court are meant to achieve timely and orderly commencement, progress and proper determination of litigation of proceedings. Given the statutory limit, principally, the delay is inexcusable unless the applicant shows sufficient cause to justify the delay and that any such extension shall not prejudice the respondent. In this regard, the Court in *Paul Wanjohi Mathenge Vs. Duncan Gichane Mathenge* [2013] eKLR the Court of Appeal while referring to other authorities observed:

“The discretion under rule 4 is unfettered, but it has to be exercised judicially, not on whim, sympathy and caprice. I take note that in exercising my discretion I ought to be guided by consideration of the factors states in previous decisions of this Court including but not limited to the period of delay, the reasons for the delay, the degree of prejudice to the respondent and interested parties if the application is granted and whether the matter raises issues of public importance. In *Henry Mukora Mwangi v Charles Gichina Mwangi-Civil*



Application No. Nai 26 of 2004, this Court held:- “It has been stated time and again that in an application under rule 4 of the Rules the learned single Judge is called upon to exercise his discretion which discretion is unfettered. It may be appropriate to re-emphasize his principle by referring to the decision in *Mwangi v Kenya Airways Ltd.* [2003] KLR 486 in which this Court stated: _ “Over the years, the Court has, of course set out guidelines on what a single Judge should consider when dealing an application for extension of time under rule 4 of the Rules.

For instance, in *Leo Sila Mutiso vs Rose Hellen Wangari Mwangi*- Civil Application No Nai. 255 of 1997 (unreported), the Court expressed itself thus:-

“It is now well settled that the decision whether or not to extend the time for appealing is essentially discretionary. It is also well settled that in general the matters which this court takes into account in deciding whether to grant an extension of the time are: first, the length of delay; secondly the reason for delay; thirdly(possibly), the chances of the appeal succeeding if the application is granted; and fourthly, the degree of prejudice to the respondent if the application is granted.”

31. The legal authorities demonstrate that it is indeed a balancing exercise between the need for there to be a good reason for the delay and the prejudice that may be caused to the other party if the extension were granted. That’s why in the *Salat* case (Supra) observed “Extension of time being a creature of equity, one can only enjoy if he acts equitably: he who seeks equity must do equity. Hence, one has to lay a basis that he was not at fault so as to let time to lapse. Extension of time is not a right of a litigant against a court, but a discretionary power of the courts which litigants have to lay a basis where they seek courts to grant it”.
32. From my appreciation of the provisions of the *Civil Procedure Act* and Rules together with the authoritative case law the discretion to extend time is unfettered. Much depends on the nature of the failure on the part of the Applicant, the consequential effect of it given that the Right of Appeal is a constitutional imperative accorded to every aggrieved party from a decision of the inferior court or tribunal. The court also must weigh the prejudice on the part of the Respondent and its overall impact on fair trial rights under Article 50 of *the constitution*. The length of the delay sometimes might look like mathematical calculation on the part of the court being moved to extend time, but the issues at stake should take precedence over the question of the length of time. Obviously inordinate delay is in excusable. This is by no means an exhaustive list of all the factors which may have to be considered in the exercise of the judicial discretion to decline or grant the extension of time.
33. As stated above in the affidavit evidence, the Applicant has an overreach of 2 months and 21 days from the date of judgement. The Applicant has surmounted the hurdle of the likelihood of the intended Appeal having high chances of success. Needless to say that the prejudice the Respondent is likely to suffer is the withholding of the fruits of the judgement which can be compensated by way of costs and interest on the decretal sum. The end result is I exercise discretion to extend time in favour of the Applicant to file the Appeal out of time. As a consequence, the Applicant shall have 21 days to file a record of Appeal and thereafter directions shall be taken on 26.6.2025.
34. The second prayer to this Application touches on stay of execution as provided under Order 42 Rule 6(1) & (2) of the Civil Procedure Rule.

“No order for stay of execution shall be made under sub rule (1) unless–



- a. the court is satisfied that substantial loss may result to the applicant unless the order is made and that the application has been made without unreasonable delay; and
- b. 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.”

35. The Court of Appeal in *Butt v Rent Restriction Tribunal* [1982] KLR 417 gave guidance on how a court should exercise discretion and held that:-

1. The power of the court to grant or refuse an application for a stay of execution is a discretionary power. The discretion should be exercised in such a way as not to prevent an appeal.
2. The general principle in granting or refusing a stay is; if there is no other overwhelming hindrance, a stay must be granted so that an appeal may not be rendered nugatory should that appeal court reverse the judge’s discretion.
3. A judge should not refuse a stay if there are good grounds for granting it merely because in his opinion, a better remedy may become available to the applicant at the end of the proceedings.
4. The court in exercising its discretion whether to grant [or] refuse an application for stay will consider the special circumstances of the case and unique requirements. The special circumstances in this case were that there was a large amount of rent in dispute and the appellants had an undoubted right of appeal.
5. The court in exercising its powers under Order XLI rule 4(2)(b) of the Civil Procedure Rules, can order security upon application by either party or on its own motion. Failure to put security for costs as ordered will cause the order for stay of execution to lapse.

36. With the respect to the question on stay of execution, I have no doubt that this court has an absolute and unfettered discretion as to the granting or refusing of stay against the valid judgement already in existence. I have reviewed the affidavit evidence and as against the principles which underpin the discretion which I am about to exercise and further balancing the competing rights of both parties I find it plausible to grant stay of execution pending the outcome of the Appeal.

37. As a consequence, therefore, the following orders shall abide:

- a. The Applicant is granted leave to file an appeal out of time.
- b. The memorandum of Appeal so filed be deemed as filed within time.
- c. That there shall be stay of execution of the judgement of the trial court to await that the determination of the Appeal
- d. The Applicant shall file the record of appeal within 21 days from today’s date
- e. That the pre-trial conference on the substantive Appeal shall held on 26.6.2025
- f. That the costs of this Application to await the outcome of the Appeal.

38. It is so ordered.

DATED, SIGNED AND DELIVERED AT ELDORET THIS 28TH DAY OF MAY 2025.

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R. NYAKUNDI



JUDGE

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