



**China Wu Yi Co Ltd & another v Akech (Civil Miscellaneous  
E008 of 2025) [2025] KEHC 11604 (KLR) (27 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 11604 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIAMBU  
CIVIL MISCELLANEOUS E008 OF 2025  
DO CHEPKWONY, J  
JUNE 27, 2025**

**BETWEEN**

**CHINA WU YI CO LTD ..... 1<sup>ST</sup> APPLICANT**

**FRANCIS MUNYUIRI MWAI ..... 2<sup>ND</sup> APPLICANT**

**AND**

**JOHN AURE AKECH ..... RESPONDENT**

**RULING**

1. What is before the court for determination is the Notice of Motion application filed under Certificate of Urgency dated 21<sup>st</sup> January, 2025 seeking the following orders:-
  - a. Spent.
  - b. That leave be granted to the 1<sup>st</sup> and 2<sup>nd</sup> Applicants to file and serve the Memorandum of Appeal and Record of Appeal out of time.
  - c. Spent.
  - d. That pending the hearing and determination of the Appeal this Honourable Court be pleased to grant stay of execution of the Judgment and decree delivered by Hon. Catherine Mburu in Kikuyu MCCC No.E195 OF 2021 on 18<sup>th</sup> December, 2024.
  - e. That the costs of and incidental to this application be provided for.\*\*
2. The Application is based on the grounds as set out on its face and the Supporting Affidavit of Bitutu Maina sworn on the instant date, wherein the delay in filing an appeal has been explained and the reasons for seeking the orders.
3. The court directed the parties to file and serve written submissions in respect to the application and it is worth noting that the Applicants' submissions are dated 18<sup>th</sup> March, 2025 while the Respondent's



submissions are dated 28<sup>th</sup> March, 2025. The court has considered the arguments raised and the authorities cited in the said submissions in its determination of the application.

### **Analysis and Determination**

4. Having read the Notice of Motion application and the Replying Affidavit, the court finds that the main issues for determination is:-
  - a. Whether the court should grant the Applicant leave to file an appeal out of time: and is so,
  - b. Whether to grant the order for stay of execution.
5. With regard to the first issue on leave to file an appeal out of time, the law under Section 79G of the Civil Procedure Act which 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.”

6. From the provision, the factors which a court ought to consider in granting leave to appeal have been addressed by the courts in this jurisdiction. For instance, in the cases of Edith Gichungu Koine –vs- Stephen Njagi Thoithi [2014]eKLR and the Court of Appeal in the case of Thuita Mwangi v. Kenya Airways Ltd [2003] eKLR, the key factors for consideration in an application for leave to appeal out of time are the length of delay which ought to be reasonable, the reasons for the delay which should be valid and plausible, the likely prejudice to the party, conduct of the parties in the entire process and chances of the appeal succeeding.
7. In this case, having considered the arguments by either party on whether or not to grant the Applicants leave to appeal out of time, this Court finds that it is not in doubt that the impugned Judgement was delivered on 18<sup>th</sup> December, 2024 and this application is dated 21<sup>st</sup> January, 2025. As admitted by the Applicants, the law provides for a period of thirty (30) days within which to lodge an appeal. The Applicant has attributed the failure to file the appeal on time on internal restructuring process within the firm which led to the termination of the Counsel handling the matter. From these submissions, the court notes that the delay was about three (3) days which is inordinate and the explanation thereof, is reasonable and unchallenged, hence satisfactory, contrary to the argument by the Respondent that the Applicants had not advanced any grounds or named specific counsel it is satisfied with the explanation given.
8. On the second issue, the law on stay of execution is enshrined under Order 42 Rule 6 of the Civil Procedure Rules which provides that:-

“(1) No appeal or second appeal shall operate as a stay of execution or proceedings under a decree or order appealed from except appeal case of in so far as the court appealed from may order but, the court appealed from may for sufficient cause order stay of execution of such decree or order, and whether the application for such stay shall have been granted or refused by the court appealed from, the court to which such appeal is preferred shall be at liberty, on application being made, to consider such application and to make such order thereon as



may to it seem just, and any person aggrieved by an order of stay made by the court from whose decision the appeal is preferred may apply to the appellate court to have such order set aside.”

9. The purpose of an application for stay of execution pending appeal was explained by the court in the case of RWW –vs- EKW [2019] eKLR, which held:-

“The purpose of an application for stay of execution pending an appeal is to preserve the subject matter in dispute so that the rights of the appellant who is exercising the undoubted right of appeal are safeguarded and the appeal if successful, is not rendered nugatory. However, in doing so, the court should weigh this right against the success of a litigant who should not be deprived of the fruits of his/her judgment. The court is also called upon to ensure that no party suffers prejudice that cannot be compensated by an award of costs.

10. Apart from explaining the reasons for delay in filing an appeal, the Applicants averred that their appeal has a high chance of success and they are ready to deposit half the decretal sum as security even though the Respondent has proposed that he be paid half the decretal sum to enable him get medical attention since he lost a whole leg.

11. The court has considered the grounds to be satisfied by a party for an application of stay of execution to succeed as set out under Order 42 Rule 6 of the Civil Procedure Rules and finds that the Applicants have satisfied the same.

12. From the aforesaid findings, and in the interest of justice, the court allows the Notice of Motion application dated 21st January, 2025 on the following terms:-

- a. Leave be and is hereby granted to the Applicants to file and serve a Memorandum of Appeal and Record of Appeal within forty-five (45) days from the date of this ruling.
- b. The Applicants are hereby ordered to deposit half of the decretal sum in court within forty-five (45) days from the date hereof.
- c. The Applicants are further ordered to pay the Respondent the remaining half of the decretal sum within forty-five (45) days from the date hereof.
- d. In default of orders (a) to (c) above, the application shall automatically stand dismissed and the interim orders shall lapse without further recourse from the court.
- e. Mention on 13<sup>th</sup> August, 2025 before the Deputy Registrar for parties to confirm compliance and further directions.

It is so ordered.

**RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT KIAMBU THIS 27<sup>TH</sup> DAY OF JUNE 2025.**

**D. O. CHEPKWONY**

**JUDGE**

In the presence of?

M/S Maina counsel for Applicant

Court Assistant - Martin

