



REPUBLIC OF KENYA



KENYA LAW
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**Morara v Muinduko (Miscellaneous Civil Application
E365 of 2024) [2025] KEHC 9418 (KLR) (27 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 9418 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
MISCELLANEOUS CIVIL APPLICATION E365 OF 2024**

**J NGAAH, J
JUNE 27, 2025**

BETWEEN

THOMAS MORARA APPLICANT

AND

JOSEPH MWANZA MUINDUKO RESPONDENT

RULING

1. Before court is a motion dated 4 December 2024 expressed to be brought under section 3,3A, of the [Civil Procedure Act](#), cap. 21; order 42 Rule 6; order 50 Rule 5, 51 Rules 1&3; and, order 22 Rule 22 of the [Civil Procedure Rules, 2010](#). The applicant seeks the following orders:
 - “ 1. That this application be certified urgent, service be dispensed with thereof and the same be heard ex parte in the first instance.
 2. That this Honourable Court be pleased to grant a stay of execution of the judgment/decree in Mombasa El012 of2023 delivered on 16th September, 2024 pending hearing and determination of this application.
 3. this Honourable court be pleased to grant leave to the Applicant to appeal out of time against the judgement in in Mombasa El012 of 2023 delivered on 16th September, 2024.
 4. That this Honourable Court be pleased to grant a stay of execution of the judgment/decree in Mombasa El012 of 2023 delivered on 16th September, 2024 pending hearing and determination of the intended appeal.
 5. That upon prayer 2,3 and 4 being granted the honourable court be pleased to order the decretal sums of Kshs 1,564,000/= be secured by way of bank guarantee pending hearing and determination of the intended appeal.



6. That costs of this application be in the cause.”
2. The application is based on the grounds that by a judgment delivered on 16 September 2024 in what I understand to be Mombasa Chief Magistrates Court Civil Case No E1012 of 2023, judgement was entered for the respondent against the applicant in the sum of Kshs 1, 564,000/=.
3. Although it was agreed between the applicant and his insurance company, Directline Assurance Company Limited, that an appeal be filed against the judgment, it could not be filed immediately because the insurance company’s bank accounts were frozen on 4 October 2024 in Milimani High Court Commercial Case No 328 of 2024.
4. The court in that case further barred any one running the company until the *Constitution* of a new board under the supervision and regulation of the Insurance Regulatory Authority. In the meantime, the time within which the appeal could have been filed lapsed hence the delay in filing it.
5. These facts are in the affidavit in applicant’s own affidavit sworn in support of the application.
6. The respondent swore a replying affidavit opposing the application. From what I gather in the affidavit, the judgment sought to be appealed against was entered in default of appearance. This is because the applicant is said to have been served with a notice of entry of judgment a copy of which has been exhibited to the respondent’s affidavit.
7. The notice is dated 17 September 2024 and it is said to have been served on 19 September 2024. Accordingly, the applicant is said to have unduly delayed in filing the instant application.
8. Nonetheless, the respondent has sworn that in the event the application is allowed, the applicant should be ordered to deposit the entire decretal sum as security for the performance of the decree.
9. Among the exhibits on the applicant’s affidavit is ruling delivered by this Honourable Court at Nairobi in the Commercial and Tax Division Case No E328 of 2024. In that ruling the court held, inter alia, that:
 - “ 4. In the premises, the orders made on 4/10/2024 are to the effect that no one is to run the company’s accounts until a new board has been constituted under the direction, supervision and regulation of the 11th Respondent.”
10. The applicant states that it is as a result of this order that the insurance company which, apparently had taken charge of the claim against the applicant, could not transact. Its accounts, according to the applicant, were frozen and, therefore, it was unable to give firm instructions for the appeal to be filed within the prescribed timelines.
11. This contention has not been disputed by the respondent. In the absence of any evidence to the contrary, I am satisfied with the reasons given for the delay in filing the appeal within the prescribed timelines. The applicant’s application is, therefore, allowed to the extent that the applicant is directed to file and serve the appeal within 14 days of the date of this ruling.
12. As far as the application for stay of execution is concerned, it is premature at this stage. Stay of execution pending appeal under order 42 of the *Civil Procedure Rules* presupposes an appeal that has been filed. In the absence of an appeal there would be no legal basis for grant of that order of stay. The costs of the application will abide the outcome of the appeal. Orders accordingly.

SIGNED, DATED AND DELIVERED ON 27 JUNE 2025

NGAAH JAIRUS



JUDGE

