



**J G K v R W M (Miscellaneous Application E068 of 2025)  
[2025] KEHC 12367 (KLR) (Family) (31 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 12367 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
FAMILY  
MISCELLANEOUS APPLICATION E068 OF 2025  
CJ KENDAGOR, J  
JULY 31, 2025**

**BETWEEN**

**J G K ..... APPLICANT**

**AND**

**R W M ..... RESPONDENT**

**RULING**

1. The Respondent in this case filed a divorce cause against the Applicant in the Chief Magistrate’s Court Nairobi, Divorce Cause No. 786 of 2022. After the trial, the Trial Court delivered a Judgment on 29<sup>th</sup> November, 2024, where it made a presumption of marriage and proceeded to dissolve the marriage thereon. The Trial Court also issued an order permitting the Respondent to access the matrimonial home to collect her personal effects under the supervision of the OCS, Kiambu Police Station.
2. The Application before the Court is dated 13<sup>th</sup> March, 2025 and the Applicant seeks the following orders;
  - i. Spent
  - ii. That the court be pleased to grant the Applicant leave to file an appeal out of time against the judgment in Milimani Divorce Cause No. 786 of 2022 delivered on 29<sup>th</sup> November, 2024;
  - iii. That the court be pleased to issue orders of stay of execution of the judgment pending the hearing and determination of the application;
  - iv. That the court be pleased to issue orders of stay of execution of the judgment pending the hearing and determination of the appeal.



3. The Applicant states in the supporting affidavit and submissions that he is dissatisfied with the Trial Court's decision and wishes to appeal it. He argues that there was no valid marriage and that the items identified as the Respondent's personal belongings are not in his possession.
4. He contends that although he informed the Trial Court of his intention to appeal, the court did not provide the judgment and typed proceedings in a timely manner to enable him to lodge the appeal against the decision.
5. He asserts that the appeal has a high probability of success and warns that without a stay of execution, he will face significant prejudice.
6. The Respondent opposes the application. She argues that the delay in submitting the application is inordinate and further that the Applicant has not demonstrated any prejudice he will suffer if the prayers sought are not granted.
7. The issues for determination are as follows;
  - i. Whether the Applicant should be granted leave to appeal out of time;
  - ii. Whether the orders sought for stay of execution are merited.
8. Section 79G of the [Civil Procedure Act](#) states as follows;

“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 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.”
9. Under Section 79G of the [Civil Procedure Act](#), it is essential that an Applicant presents compelling and substantial reasons before the Court considers an application for an extension of time. This provision requires that an Applicant clearly justify the reasons for failing to lodge the appeal within the stipulated timelines.
10. In the case of *Paul Musili Wambua v Attorney General & 2 Others* [2015] eKLR, the Court of Appeal, in considering an application for extension of time and leave to file the Notice of Appeal out of time, stated the following;

“... it is now settled by a long line of authorities by this court that the decision of whether or not to extend the time for filing an appeal the Judge exercises unfettered discretion. However, in the exercise of such discretion, the court must act upon reason(s) not based on whim or caprice. In general, the matters which a court takes into account in deciding whether or not to grant an extension of time are; the length of delay, the reason for the delay, the chances of the appeal succeeding if the application is granted, the degree of prejudice to the Respondent if the application is granted.”
11. In the present case, the decision was delivered on 29<sup>th</sup> November, 2024. The Applicant contends that the certified copy of judgment and the proceedings were not issued in good time.
12. The certificate of delay issued on 16<sup>th</sup> June, 2025 indicates that Counsel for Applicant made a request for the same on 29<sup>th</sup> November, 2024 and on 2<sup>nd</sup> December, 2024. They were paid for on 2<sup>nd</sup> December, 2024. They were issued on 6<sup>th</sup> March, 2025 and collected on 9<sup>th</sup> June, 2025.



13. The application was filed on 26<sup>th</sup> March, 2025, approximately four months after the judgment was delivered. However, there is evidence that the Applicant actively sought the certified copy of the proceedings and judgment, but was delayed by the registry's response. The reasons for the delay have been satisfactorily explained. Based on this analysis, I conclude that the Applicant has not demonstrated indolence.
14. The Court in exercise of its discretion grants the Applicant leave to appeal out of time.
15. Regarding the prayer for stay of execution, the conditions which a party must establish in order for the Court to order stay of execution are provided for under Order 42 Rule 6 of the Civil Procedure Rules, which stipulates as follows;
  1. No appeal or second appeal shall operate as a stay of execution or proceedings under a decree or order appealed from except 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 orders set aside.
  2. 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 1<sup>st</sup> 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.
16. The appeal has not been filed, and the Applicant has not demonstrated that they have an arguable appeal, as no draft memorandum of appeal or grounds have been provided.
17. The parties were already living separately from 2021. Further, at the delivery of the judgment, the Trial Court addressed the issue of personal effects with directions to the parties involved to discuss and reach an agreement regarding the specific items in question. The Trial Court also provided an avenue for the parties to return to court if they failed to achieve a consensus.
18. In balancing the two competing interests at stake, this Court determines that failing to grant a stay would not cause any significant harm or prejudice to either party.
19. Disposition;
  - i. Leave is granted to the Applicant to file an appeal out of time against the judgment delivered on 29<sup>th</sup> November, 2024;
  - ii. The appeal is to be filed and served within 14 days;
  - iii. Prayer for stay of execution is denied;
  - iv. No order as to costs;
  - v. The miscellaneous file is hereby closed.
20. It is so ordered.



**DATED, DELIVERED AND SIGNED AT NAIROBI THROUGH THE MICROSOFT TEAMS  
ONLINE PLATFORM ON THIS 31<sup>ST</sup> DAY OF JULY, 2025**

.....

**C. KENDAGOR JUDGE**

In the presence of:

Court Assistant: Beryl

Ms. Nyaga, Advocate holding brief for Mr. Kimathi, Advocate for the Applicant

Ms. Odiya, Advocate for Respondent

