



**Kamau v Njoroge (Miscellaneous Civil Application E039 of 2025)
[2025] KEHC 11702 (KLR) (31 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 11702 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT THIKA
MISCELLANEOUS CIVIL APPLICATION E039 OF 2025
FN MUCHEMI, J
JULY 31, 2025**

BETWEEN

MARY NJERI KAMAU APPLICANT

AND

PAUL NGUGI NJOROGE RESPONDENT

RULING

Brief facts

1. The application dated 17th March 2025 seeks for orders of leave to file an appeal out of time against the judgment in Thika CMCC No. E484 of 2021 delivered on 26th June 2024. The applicant further seeks for orders of stay of execution in respect of the judgment in the same case and setting aside the proclamation and warrants of attachment by M/s View Line Auctioneers issued on 12th March 2025 pending the hearing and determination of the intended appeal.
2. The respondent filed a Replying Affidavit dated 5th June 2025 in opposition to the application.

Applicant's Case

3. The applicant states that the judgment in Thika CMCC No. E484 of 2021 was delivered on 26th June 2024 whereby the trial court entered judgment in favour of the respondent finding the applicant 100% liable and awarding the respondent general damages for pain, suffering and loss of amenities at Kshs. 1,300,000/- and special damages of Kshs. 3,300/- with costs and interest. Being aggrieved with the said decision, the applicant states that she intends to lodge an appeal however the statutory time within which to do so has lapsed.
4. The applicant avers that the delay in lodging the appeal was occasioned by the court registry who have never given a copy of the judgment to her for nine (9) months now despite requesting for it. The applicant states that she received a copy of the judgment on 12th March 2025, and proceeded to file



the present application. Furthermore, the 30 days stay orders granted by the court has since lapsed and unless stay of execution is granted, the appeal shall be rendered nugatory and the applicant will suffer irreparable loss and damage.

5. The applicant is apprehensive that the respondent may proceed with execution as he has, through his agent M/s Viewline Auctioneers extracted warrants of attachment and proclamation and may execute on attachment her motor vehicle registration number KBJ 324L and all of her household goods.
6. The applicant states that she has a strong appeal which has high chances of success. Further, the decree is for a substantial sum of money and if paid to the respondent, she is apprehensive that she will not be able to recover the whole sum.
7. The applicant is ready and willing to furnish the court with security in the form of the decretal sum be secured in a joint interest earning bank account in the names of both the advocates of the parties without any partial payment being made to the respondent as the intended appeal is on the issue of quantum of damages. The applicant further states that he has brought the present application promptly and without unreasonable delay.

The Respondent's Case

8. The respondent states that judgment in Thika CMCC No. E484 of 2021 was delivered on 26th August 2024 and the applicant was duly aware of the contents and terms of the said judgment as her advocate Mr. Kinuthia attended court and was present when the judgment was read out.
9. The respondent argues that the applicant is misleading the court by stating in the draft memorandum of appeal that the learned magistrate erred in not considering their overwhelming evidence whereas no evidence or witness was proffered by the applicant.
10. The respondent states that no tenable reasons have been advanced by the applicant on why there has been delay in filing the present application as the judgment was ready on 26th June 2024 and the applicant's counsel attended judgment. Furthermore, the respondent states that his advocates wrote to the applicant's advocate on the judgment sum and costs vide letter dated 26th August 2024.
11. The respondent asserts that the appeal is not arguable as the sum awarded of Kshs. 1,300,000/- for multiple grievous injuries sustained is not excessive and is not likely to be disturbed on appeal. Further, the appeal on liability is a non starter as the applicant did not controvert his evidence as no defence witnesses were called.
12. The respondent argues that there has been inordinate delay for a duration of 11 months in filing the present application from 26th august 2024, which delay has not been explained.
13. The respondent avers that he is a businessman and the applicant has not placed any material before the court to support her averment that he will be unable to refund the decretal sum.
14. The respondent states that the bank guarantee is misleading as it expires in a few months. Furthermore, the respondent states that given the occurrence of the accident is not disputed, the court should direct that the applicant pay half the decretal sum to him to enable him take care of his medical needs, as a condition of stay.
15. This court gave directions to the parties to file submissions but from the record the applicant failed to comply. The respondent had opted not to file any submissions.



The Law

Whether the court should exercise its discretion to grant the applicant leave to file his appeal out of time;

16. Section 79G of the *Civil Procedure Act* states:-

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.

17. It is clear from the wording of section 79G of the *Civil Procedure Act* that before the court considers extension of time, the applicant must satisfy the court that that he has good and sufficient cause for filing the appeal out of time. This principle was enunciated in the case of *Diplack Kenya Limited vs William Muthama Kitonyi* [2018]eKLR an applicant seeking enlargement of time to file an appeal or admission of an already filed appeal must show that he has a good cause for doing so.

18. The Supreme Court in the case of *Nicholas Kiptoo Korir arap Salat vs IEBC and 7 Others* [2014] eKLR enunciated the principles applicable in an application for leave to appeal out of time. The court stated inter alia that:-

“The underlying principles a court should consider in exercise of such discretion should include:-

- a. Extension of time is not a right of any party. It is an equitable remedy that is only available to a deserving party at the discretion of the court;
- b. A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the court;
- c. Whether the court should exercise the discretion to extend time, is a consideration to be made on a case-by-case basis;
- d. Whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the court;
- e. Whether there will be any prejudice suffered by the respondent if the extension is granted;
- f. Whether the application has been brought without undue delay.

19. Similarly in the case of *Paul Musili Wambua vs 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.”

20. Applying the above principles to the present case, the judgment in Thika CMCC No. E484 of 2021 was delivered on 26th August 2024 and the applicant filed the current application on 17th March 2025. This is approximately five (5) months outside the time limited for filing an appeal. The applicant has attributed the delay in filing his appeal to the court registry’s failure to give her a copy of the judgment for over nine months since the delivery of the judgment.
21. On perusal of the record, judgment in the trial court was delivered in the presence of the advocate of the applicant, one Mr. Kinuthia. Upon delivery, Mr. Kinuthia requested for 45 days stay which the trial magistrate granted. On the same date, the respondent’s advocate, though not present in court during the delivery of judgment, wrote to the applicant’s advocate tabulating the judgment sum and his costs. Thus, it is evident that the applicant was represented during delivery of judgment and was therefore, aware of the judgment.
22. In my view, the applicant is being dishonest when she states that she was not aware of the judgment or its contents until several months later. It is evident that the applicant was indolent after judgment was delivered and instead blames the court registry for not availing a copy of the judgment. In my view, I am not persuaded by the applicant’s arguments on the reasons for delay.
23. It is therefore my considered view that the applicant has not given any plausible explanation on the reasons for delay.
24. The record further shows that the current application was filed five months after judgment was delivered. It is my view that a delay of 5 months is inordinate and inexcusable and further the reasons given for the delay are not plausible.
25. Accordingly, I find that the applicant has not established to the satisfaction of the court that time should be enlarged to enable her file her appeal.
26. On the perusal of the intended Memorandum of Appeal, the intended appeal does not raise arguable points of law and fact, in my view. Thus, without delving to the merits of the appeal, the chances of the appeal succeeding should the application be granted are limited.
27. In the circumstances it is my considered view that the applicant has not established to the satisfaction of the court why time should be enlarged to enable her file an appeal.
28. Having declined to grant the prayer for admitting the appeal out of time, the prayer for stay of execution of the judgment and decree automatically fails since there is no existent appeal.
29. It is thus my considered view that the application dated 17th March 2025 lacks merit and is hereby dismissed with costs to the respondent.
30. It is hereby so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT THIKA THIS 31ST DAY OF JULY 2025.

**F. MUCHEMI
JUDGE**

