



**Kasina & another v Kavulunze (Civil Miscellaneous Application
E006 of 2025) [2025] KEHC 11646 (KLR) (31 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 11646 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MACHAKOS
CIVIL MISCELLANEOUS APPLICATION E006 OF 2025**

EN MAINA, J

JULY 31, 2025

BETWEEN

WILLIAM MULWA KASINA 1ST APPLICANT

EDWARD NDIRUI KIMANI 2ND APPLICANT

AND

MUTUKU KAVULUNZE RESPONDENT

RULING

1. Before this court is the Notice of Motion dated 16th January 2025. The application has two limbs the first of which seeks leave to file the ‘intended appeal’ out of time and the second seeking stay of execution pending hearing and determination of the “intended appeal”.
2. The application is expressed to be brought under Order 21 Rule 1B, Order 22 Rule 22, Order 40 Rule 6, Order 51 Rule 1 of the [Civil Procedure Rules](#) and Sections 1A, 1B and 3A of the [Civil Procedure Act](#) and Article 159(2)(a) and (d) of the [Constitution](#).
3. The grounds for the application are:
 - a. Judgment herein was entered on 21st August, 2024 and the Applicant was found to 100% liable. Respondent was awarded general damages Kshs.300,000/-; special damages Kshs.6,750/- with costs and interest.
 - b. The Applicant being dissatisfied with the said judgment have preferred an appeal on quantum.
 - c. That the Applicant’s appeal has high chances of success.
 - d. That delay was occasioned by the fact that after judgment was delivered on 21st August 2024 by the time the Applicant/Intended Appellant got back to his Advocates on record in regard



to the same after the extraction of the judgment, the time to launch an Appeal had already expired.

- e. The Applicant is reasonably apprehensive that the Respondent, as Decree Holder, may proceed and levy execution against him.
 - f. That the judgment is of substantial amount and the Applicant is apprehensive that if the Respondent is paid he may deal with the same in a manner prejudicial to the Applicant and if the appeal is successful, he might not be able to recover the same from the Respondent.
 - g. That the Respondent has not disclosed nor furnished the court with any documentary evidence to prove their financial standing.
 - h. Unless stay of execution is granted, and the Respondent levy and/or executes the said judgment of 21st August, 2024 the Applicant's appeal will be rendered nugatory and the Applicant will suffer irreparable loss and damage.
 - i. The Applicant's Insurer is ready, willing and able to furnish the court with a Bank Guarantee as security to the court.
 - j. This application is made in good faith and will not occasion any prejudice to the Respondent.
 - k. That the Respondent will not be prejudiced in any way if the application is allowed.
 - l. That the application has been brought without unreasonable or undue delay.
 - m. That unless stay of execution is ordered, irreparable loss will result to the Applicant.
4. The application is supported by affidavit of the Applicant sworn on 16th January 2025 but is vehemently opposed through the replying affidavit of Mutuku Kavulunze, the Respondent, sworn on 28th April 2025.
 5. Learned Counsel for the parties consented to canvass the application by way of written submissions within the timelines set by this court but by the time of writing this ruling only those of the Respondent had been received. Those of the Applicants were not filed.
 6. I have considered the application, the grounds on its face, the affidavits (in support and in reply), the submissions of the learned Counsel for the Respondent, the cases cited and the law. I am not persuaded that the application is merited and this is for reasons that firstly, the application is not canvassed as it was to be canvassed through written submissions which Counsel for the Applicants did not file.
 7. Secondly, in an application for enlargement of time to file an appeal out of time or for admitting an appeal out of time, whereas the court's discretion is unfettered, the court is enjoined to consider the length of the delay, the chances of the appeal succeeding and lastly the prejudice to the respondent if the application is granted- see the case of *Thuita Mwangi v Kenya Airways Ltd* [2003] eKLR and the case of *Susan Ogutu Oloo & 2 Others v Doris Odindo Omolo* [2019] eKLR.
 8. In this case, the judgment was admittedly delivered on 21st August 2024 and similarly the decree is dated 21st August 2024 yet this application was filed on 16th January 2025, hence a delay of four months. In my view the delay is inordinate more so as no plausible explanation is given for the delay because other than stating that the client did not give instructions to appeal until time had lapsed no other reason is given. In my view the delay in instructing their advocate to prefer an appeal could only mean that the Applicants were not intent on appealing and the intended appeal is but an afterthought. Indeed there is nothing to demonstrate that the instructions to appeal indeed arrived late, to wit, after time for appealing had lapsed.



9. Looking at the grounds for the application and the facts deposed to in the supporting affidavit, one cannot help but notice that the Applicants were more interested in staying execution of the decree than in obtaining leave to appeal. It is also instructive that the intended appeal is against the quantum only. The lack of seriousness in the application for leave to appeal is demonstrated by the inertia of Counsel for the Applicants in canvassing the application. The chances of the appeal succeeding, is in any event, minimal as liability is not contested.
10. Further, no prejudice shall be suffered by the Applicants other than that which they have bestowed upon themselves. On the contrary it is the Respondent who stands to suffer prejudice by being prevented from enjoying the fruits of his judgment.
11. On the second limb for stay of execution, it is trite that stay can only be granted where there is an appeal. In this case there is no appeal as leave to file an appeal has been rejected. Accordingly, both limbs of the application have no merit and the application is dismissed in its entirety and as costs follow the course the costs of the application are awarded to the Respondent.

Orders accordingly

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

E.N. MAINA

JUDGE

In the presence of:

Ms Chelangat for Respondent

No appearance for Kimondo Gachoka for the Applicant

Geoffrey - Court Assistant

