



**Mpayei v Wachira (Miscellaneous Civil Application E030 of 2025)
[2025] KEHC 11802 (KLR) (31 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 11802 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAROK
MISCELLANEOUS CIVIL APPLICATION E030 OF 2025**

CM KARIUKI, J

JULY 31, 2025

BETWEEN

SERA LESEIYO MPAYEI APPLICANT

AND

FRANCIS WANGOMBE WACHIRA RESPONDENT

RULING

1. Before this Court is the Notice of Motion application dated 21st April 2025 brought under Section 79G of the *Civil Procedure Act*, Order 50 Rule 6 and Order 51 Rule 1 of the Civil Procedure Rules. The Applicant, Sera Lesenyo Mpayei, seeks the following substantive reliefs:
 - a. That leave be granted to file an appeal out of time against the judgment delivered on 12th November 2024 in Narok SCCCOMM No. E167 of 2024.
 - b. That there be a stay of execution of the said judgment and decree, pending hearing and determination of the intended appeal.
 - c. That the annexed draft Memorandum of Appeal be deemed duly filed upon payment of the requisite fees.
 - d. Costs of the application be in the cause.
2. The application is premised on the grounds set out therein and supported by the affidavit sworn by the Applicant on even date.

Background

3. The impugned judgment in Narok SCCCOMM No. E167 of 2024 was delivered on 12th November 2024. It awarded the Respondent Kshs. 100,000/= being a refund arising from a lease agreement between the parties. The Applicant avers that the delay in lodging the appeal within the statutory



period was occasioned by financial constraints that hindered her from instructing her counsel in time. She maintains that the intended appeal raises arguable legal issues, including the proper application of the doctrine of frustration and allocation of risk in lease agreements.

4. The Respondent has not filed any affidavit in response to the application, although it is evident from the record that he has already initiated execution proceedings through a Notice to Show Cause dated 15th January 2025, which is pending mention on 2nd July 2025.
5. It is noteworthy that the Applicant's Advocate effected service of the application and supporting documents upon the Respondent on 3rd June 2025 through the Respondent's registered email address franciswachira@gmail.com. To date, the Respondent has not filed any replying affidavit or grounds of opposition, nor has he taken any steps to contest the application.
6. Accordingly, the application stands unopposed.

Analysis and Determination.

Issues for Determination

7. The application raises two main issues:
 - i. Whether the Applicant has provided sufficient cause to warrant extension of time to appeal under Section 79G of the *Civil Procedure Act*;
 - ii. Whether a stay of execution pending the intended appeal should be granted.

1. Leave to Appeal out of time

8. Under Section 79G of the *Civil Procedure Act*, an appeal from a subordinate court to the High Court must be filed within 30 days. The same section allows for extension of time where sufficient cause is shown.
9. In *Leo Sila Mutiso v Rose Hellen Wangari Mwangi* [1999] 2 EA 231, the Court set out the principles applicable when considering extension of time: the length of delay, the reason for delay, whether the appeal is arguable, and prejudice to the other party.
10. The judgment sought to be appealed was delivered on 12th November 2024. This application was filed on or about 21st April 2025. The Applicant attributes the delay to financial constraints in instructing counsel, a reason not rebutted by the Respondent. The Applicant annexes a draft Memorandum of Appeal raising weighty legal issues regarding the application of the doctrine of frustration in lease agreements. I am satisfied that the explanation offered is plausible, and the intended appeal is not frivolous.

2. Stay of Execution

11. Order 42 Rule 6 of the Civil Procedure Rules sets out the conditions for granting stay:
 - a. Substantial loss may occur;
 - b. The application was made without unreasonable delay;
 - c. Security for due performance is given.
12. The Applicant has demonstrated that execution proceedings have been commenced, including a pending Notice to Show Cause. This poses a risk of civil jail and clearly amounts to a substantial loss.



The application was brought without inordinate delay, and the Applicant is willing to comply with terms that may be set by the Court.

Conclusion and Orders

13. Having considered the application, supporting affidavit, and the fact that it remains unopposed, I find the application meritorious and grant it on the following terms:
- i. Leave is granted to the Applicant to file an appeal out of time against the judgment delivered on 12th November 2024 in Narok SCCCOMM No. E167 of 2024.
 - ii. The annexed draft Memorandum of Appeal shall be deemed duly filed upon payment of the requisite court fees within 7 days of this Ruling.
 - iii. There shall be a stay of execution of the judgment and decree, including the Notice to Show Cause dated 15th January 2025, pending hearing and determination of the intended appeal, on condition that the Applicant deposits Kshs. 50,000 in court as security within 30 days of this Ruling.
 - iv. In default of compliance with order (ii) or (iii), the orders for stay shall stand vacated automatically without further reference to the Court.
 - v. Costs of this application shall be in the cause.
14. Orders accordingly.

**DATED, SIGNED, AND DELIVERED AT NAROK THROUGH TEAMS APPLICATION, THIS
31ST DAY OF JULY 2025**

.....

CHARLES KARIUKI

JUDGE

