



**Coolio Enterprises Ltd & another v Okongo (Civil Miscellaneous Application  
E077 of 2025) [2025] KEHC 11188 (KLR) (30 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 11188 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KISUMU  
CIVIL MISCELLANEOUS APPLICATION E077 OF 2025**

**A MABEYA, J**

**JULY 30, 2025**

**BETWEEN**

**COOLIO ENTERPRISES LTD ..... 1<sup>ST</sup> APPLICANT**

**VICTOR CHERUIYOT KIRUI ..... 2<sup>ND</sup> APPLICANT**

**AND**

**RAMRAKA AKOTH OKONGO ..... RESPONDENT**

**RULING**

1. This is a ruling on the Motion on Notice dated 7/5/2025 by the applicants. The same was made under sections 1A and 1B of the [Civil Procedure Act](#), Orders 10 Rule 11, 22 Rule 22 and 51 Rules 1 and 15 of the [Civil Procedure Rules](#).
2. The Motion sought stay of execution of the Judgment of the trial court made on 20/3/2025 and leave to appeal against it out of time. The grounds thereof were set out in the body of the Motion and the Supporting affidavit of Aligula & Millian sworn on 7/5/2025.
3. The grounds were that; a judgment was made on 20/3/2025 for Kshs.3,562,463/- as damages in Nyando SPMCC No. E004 of 2021. That due to sheer pressure of work and heavy work load, the file had escaped the applicants as a result of which they only instructed their advocate on 5/5/2025 to file an appeal against the judgment. That the appeal raised serious issues and points of law which the applicants should be allowed to ventilate on appeal. That the appeal had high chances of success and may be rendered nugatory unless the orders sought were granted.
4. The application was opposed vide the replying affidavit of Ramraka Akoth Okongo sworn on 14/5/2025. She deposed that she was a Ward Agricultural Officer with the County of Homabay and therefore a person of means capable of refunding the decretal amount if ordered to do so. That there were no sufficient grounds for applying for stay of execution pending appeal.



5. That no sufficient cause that had been provided for appealing out of time. That the applicants were dishonest having stated in the body of the Motion that they were unaware of the Judgment for non-service of notice upon them then turn around and advance the ground of heavy work load. That the applicants' advocates were present in Court at the time the judgment was delivered. That on 5/5/2025 the applicants' advocates had written to her advocates asking for bank details to settle the decretal sum. That the application was therefore an afterthought.
6. The respondent urged that heavy work load and sheer pressure of work was not a sufficient cause for granting leave to file an appeal out of time. That she continues to visit hospitals for treatment and allowing the application will greatly prejudice her.
7. I have considered the record and the respective parties' contestations. This is an application for leave to appeal out of time and consequent stay of execution.
8. The applicants did not invoke the jurisdiction of this Court for extension of time for filing an appeal. The provisions of the law cited by the applicants in the Motion do not provide for the prayer for extension of time. However, by dint of Order 51 Rule 10 of the Civil Procedure Rules and section 3A of the Civil Procedure Act, I do excuse the failure to cite the correct provision.
9. The jurisdiction to extend time for filing an appeal out of time is to be found in the proviso to section 79G of the Civil Procedure Act. The section provides: -

“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 to the appellant 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.”
10. An application for extension of time is discretionary. But it must be exercised within certain parameters. In deciding whether to grant an extension of time or not, the Court will consider the length of the delay, the reason for the delay, the degree of prejudice to be suffered by the opposite party and probably, the chances of success of the appeal if the application is granted. See Thuita Mwangi -vs- Kenya Airways 2003) eKLR.
11. On the length of time, the Judgment was delivered on 20/3/2025. The appeal was supposed to be filed by the 19/4/2025. However, the present application was made on 7/5/2025 about 18 days out of time. That may not be so inordinate.
12. As to the reason for the delay, in the body of the Motion, the applicants stated in ground No. (a) of the Motion that: -

“The reason for appealing out of time is that we were not aware that Judgment had been given on the date unknown to the defendant as no notice of entry of judgment was given at all.”
13. However, in paragraph 5 of the Supporting affidavit, the applicants swore that the reason for the delay was due to heavy work load and sheer pressure of work that the file skipped their mind and they delayed to give instructions to lodge an appeal.
14. From the replying affidavit of the respondent, it turned out that not only did the applicants attend the delivery of the judgment, but that their advocate applied for and obtained a stay of execution



for 30 days. That further on 5/5/2025, the advocate for the applicants wrote to the applicants' advocates requesting for banking details to transfer the decretal amount. These averments were never controverted, contradicted nor challenged. They remained unchallenged.

15. From the foregoing, it is clear that the application for extension of time was but an afterthought. There was no sufficient cause that was advanced that warrants the granting the extension sought. The grant of extension of time is a discretionary relief.
16. Being of the foregoing conclusion, I do not think that the other two principles fall for consideration. A party who takes the Court for granted, who misleads the Court cannot expect any exercise of the Court's discretion in its favour. In any event, any further delay in paying the respondent will highly prejudice her considering her status. This is so considering that the only ground for appeal is challenged on damages and not liability.
17. I think the prayer for leave having fallen by the wayside the pray of execution does not fall for consideration.
18. Accordingly, the Court finds the application dated 7/5/2025 to be without merit and dismisses the same with costs.

It is so ordered.

**DATED AND DELIVERED AT KISUMU THIS 30<sup>TH</sup> DAY OF JULY, 2025.**

**A. MABEYA, FCI Arb**

**JUDGE**

