



**Njikaru v Thiongo & another (Miscellaneous Civil Application
E015 of 2025) [2025] KEHC 12397 (KLR) (3 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 12397 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERUGOYA
MISCELLANEOUS CIVIL APPLICATION E015 OF 2025
EM MURIITHI, J
SEPTEMBER 3, 2025**

BETWEEN

MICHAEL KABUGA NJIKARU APPLICANT

AND

PENINAH WANJIRU THIONGO 1ST RESPONDENT

HARRISON KINYUUA MUNENE 2ND RESPONDENT

*(Being an appeal from the judgment of Hon. Martha Mutuku delivered
on the 3rd October 2024 at Kerugoya CMCCC NO. 111 of 2019)*

RULING

1. The Court has considered the application dated 7/3/2025 expressly seeking for extension of time to file appeal and implicitly stay of execution pending appeal (see paragraph 6 of the Supporting Affidavit) on the tests of the length of delay and explanation, and prejudice to the respondent [see Supreme Court’s Nicholas Kiptoo Korir Arap Salat case, *infra*,]; and existence of an arguable case, substantial loss and provision of security for the due performance of the decree as may become binding on the applicant on appeal. See Order 42 Rule 6 (1) and (2) of the Civil Procedure Rules.
2. By section 79 G of the [Civil Procedure Act](#), the applicant had 30 days from 3/10/2024, expiring on 3/11/2024. By the time the application was filed on 9/3/2025, the applicant was four (4) months out of time. The delay is not inordinate.
3. The application is opposed by a Replying Affidavit sworn on 18/3/2025 primarily on the grounds that he applicant had been granted 45 day stay of execution by the trial court; he had participated in the post judgment taxation of Bill of Costs; he had no technical difficulties in filing as alleged as he had participated in virtual proceedings of the Court and filed documents online on the Court Tracking System (CTS) platform and that he had not substantiated his financial difficulties he faced.



The respondent urged the court to order the applicant to deposit the decretal sum into court if stay is granted.

4. The 2nd respondent did not file any response to the application despite request and adjournment granted for that purpose at his behest.

Submissions

5. By Submissions dated 14/4/2025, the applicant pointed to section 79G of the *Civil procedure Act* and Order 50 Rule 6 of the Civil Procedure Rules and used multiple case-law citations to emphasize the Court's discretion to extend time and invoked principle of substantial justice for the full hearing of a party's case/appeal for purposes of correcting errors of law and fact committed by the trial court, and sought to fit himself within the test for extension of time in the Supreme Court decision of Nicholas Kiptoo Korir Arap Salat v. IEBC & 7 Others (2014) eKLR.
6. The 1st Respondent's Submissions dated 20/5/2025 relied on Nicholas Kiptoo Korir Arap Salat, supra, and highlighted that the appellant's intended appeal was frivolous as the award of damages of 200,000/- was within the range of comparable awards for soft tissue injuries; that the delay in filing the appeal had not been sufficiently explained; and that, to the prejudice of the Respondent, there had been no offer for, or deposit of security.

Delay

7. The applicant explained the delay on account of reasons perhaps naively cast at paragraph 5 of the Supporting Affidavit of the self-representing applicant as follows:

- “ 5. That I was unable to file my appeal within the stipulated time due to:
- a. Financial constraints.
 - b. I was in search of the 2nd Respondent Harrison Kinyua Munene who has never entered appearance in this matter and his alibi is not know yet the court declared both defendants jointly and severally liable for the accident. (Annexed and attached herein is a copy of letter and email marked MKN5).
 - c. Personal family unforeseen circumstances that really needed my attention.
 - d. Technical difficulties in e-filing the appeal.
 - e. The matter involved complex legal and factual issues that required additional time for proper preparation of the appeal.
 - f. Other procedural obstacles that delayed compliance.”

8. Although the 1st respondent opposes the application by reason that the applicant had post judgment appearances during taxation of costs and could attend court on the virtually and file documents on the virtual platform, the court grants eh benefit of doubt to the self-representing applicant and accept that the circumstances set out above could lead him to suffer delay in filing the appeal, which, in any event, is not inordinate.



Substantial loss

9. The prospect of paying the decretal sum of Ksh.374,236 together with interest and costs, while appearing modest is substantial loss if there is a risk that it may not be recovered in the event of successful appeal. The question is therefore whether the respondent/decreeholder has demonstrated means or ability to repay.

Arguability of appeal

10. The Draft Memorandum of Appeal dated 7/3/2025 raises the issue of sufficiency of evidence in the determination of the trial court in liability and apportionment between the defendants as well as a challenge as to 'exorbitant, excessive and punitive damages' in the award. The inordinately high or low assessment of damages is one of the factors that warrant appellate interference with an award of damages by the trial court on the test of *Butt v Khan* [1978] KECA 24 (KLR) that

“An appellate court will not disturb an award of damages unless it is so inordinately high or low as to represent an entirely erroneous estimate. It must be shown that the judge proceeded on wrong principles, or that he misapprehended the evidence in some material respect, and so arrived at a figure which was either inordinately high or low.”

11. Consequently, it cannot be said that the appeal is frivolous. It raises an arguable appeal, which as settled, need not be one that must succeed at the hearing.

Balance of convenience

12. Balancing the interests of the decreeholder to the fruits of the judgment and the appellant's right of appeal the court is minded to extent the time for filing an appeal on condition that the Memorandum of Appeal is filed within the next seven days and the Record of Appeal within the next 30 days.
13. The applicant shall be granted stay of execution pending appeal on condition that he deposits into Court part of the decretal amount of Ksh.374,236, being the sum of Ksh.200,000/- within thirty (30) days.
14. In default of payment of the sum of Ksh.200,000/- within the period of thirty (30) days allowed in above, the order for stay of execution shall lapse and be of no effect.

Orders

15. Accordingly, for the reasons set out above, the Court finds merit in the application for extension of time to file appeal and for stay of execution pending appeal, which is granted upon terms that:
 1. The Court extends the time for filing an appeal on condition that the Memorandum of Appeal is filed within the next seven (7) days and the Record of Appeal within the next thirty (30) days.
 2. The Court grants an order of stay of execution pending appeal on condition that the applicant/appellant deposits into Court part of the decretal amount of Ksh.374,236, being the sum of Ksh.200,000/- within thirty (30) days.
 3. In default of deposit of the said sum of Ksh.200,000/- within the period stated above, the order for stay shall lapse and be of no effect.
 4. The costs of application shall, in terms of Order 50 Rule 6 of the Civil Procedure Rules be paid by the appellant to the 1st Respondent.



Order accordingly.

DATED AND DELIVERED THIS 3RD DAY OF SEPTEMBER 2025.

EDWARD M. MURIITHI

JUDGE

Appearances:

Michael Kabuga Applicant in person.

Ms. Kimani for the 1st Respondent

Mr. Harrison Kinyua Munene 2nd respondent in person.

