



REPUBLIC OF KENYA



**Lagat v Cheruiyot (Civil Appeal E256 of 2024)
[2025] KEHC 12319 (KLR) (2 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 12319 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CIVIL APPEAL E256 OF 2024
RN NYAKUNDI, J
SEPTEMBER 2, 2025**

BETWEEN

SAMSON KIMELI LAGAT APPELLANT

AND

RICHARD CHERUIYOT RESPONDENT

RULING

1. Before this court is a Notice of Motion brought under Section 1A, 3A, 79G of the *Civil Procedure Act*, cap 21 L.O.K Order 42 Rule 6 Order 51 rule 1 of the Civil Procedure Rules, Order 50 Rule 5, Order 22 rule 22(1) Article 159(2) of *the constitution* and any other enabling provisions of the Law seeking the following orders:
 - i. That this application be certified urgent, service be dispensed with thereof and the same be heard ex-parte in the first instance.
 - ii. That the Honourable Court be pleased to extend time for lodging of a memorandum of Appeal against the judgment of the Hon. Peter Areri made on 10th September, 2024 in Eldoret CMCC 854 of 2018 Richard Cheruiyot -vs- Samson Kimeli Lagat.
 - iii. That the Memorandum of Appeal dated 26th September, 2024 be deemed as properly filed
 - iv. That pending the hearing and determination of the Application herein, there be a stay of execution of the Judgement made on 10th September, 2024 in Eldoret CMCC 854 OF 2018 and of all subsequent orders entered against the Appellant/Applicant emanating therefrom
 - v. That pending the hearing and determination of the appeal herein, there be a stay of execution of the judgment made on 10th September, 2024 in Eldoret 854 of 2018 and of all subsequent orders entered against the Appellant/Applicant emanating therefrom



- vi. That pending the hearing and determination of the appeal herein, there be stay of execution of the judgment made on 10.9.2024 in Eldoret 854 of 2018 and of all subsequent orders entered against the appellant/applicant emanating therefrom.
- vii. That pending the hearing and determination of the intended appeal and under the Applicant herein do avail security by way of Bank Guarantee from Family Bank for the whole judgement sum of Kshs 715,088/=
- viii. That the costs of and incidentals to this application abide the result of the Appeal

On the Grounds

- a. That judgement was delivered in Eldoret 854 of 2018 on 10.9.2024 whereby the plaintiff was awarded a Net award Kshs 715,088/= exclusive of costs and interest
- b. That the Appellant/Applicant being dissatisfied with the judgement has instructed its Advocates to institute an Appeal against the said judgement
- c. That the Appellant/Applicant being dissatisfied with the judgement prepared the memorandum of appeal dated 26th September, 2024 within the required timelines and had it assessed and assigned Assessment Reference number E3L7UPRW.
- d. That this being a road traffic accident claim with the instructing client being direct line, Assurance, was faced with challenges whereby their accounts were frozen by the Insurance regulatory authority which made payment of court fees impossible.
- e. That the said delay in filing the Appeal was not by want and/or negligence but the same was beyond the Applicant's Control
- f. That due to the audit and heightened surveillance by the authority communication with insurers was strained and/or broken down hence a delay in approval of payment and/or release of money to facilitate filing fees.
- g. That the 30 days stay granted for stay of execution as well as the time for lodging the appeal lapsed without filing the Appeal and the subsequent Application for stay pending the hearing and determination of appeal hence the need to seek an extension of time within which to lodge the Appeal
- h. That no prejudice will be occasioned

It is further supported by an affidavit sworn by an affidavit sworn by Samson Kimeli Lagat who deponed as follows:

- i. That I am an Appellant/Applicant hence duly authorized and duly competent to swear this affidavit
- ii. That I am informed by my advocates on record which information I verily believe to be true that judgment was delivered in Eldoret 854 of 2018 on 10.9.2024 whereby the plaintiff was awarded a net award Kshs 715,088/= exclusive of costs and interest
- iii. That being dissatisfied with the judgement I have just but instructed my advocate to institute an Appeal against the said judgement
- iv. That the Appellant/Applicant being dissatisfied with the judgement prepared the memorandum of Appeal dated 26th September, 2024 within the required timeline and had it assessed and assigned



- v. That I am informed by my advocate on record which information I verily believe to be true that my insurer, direct line assurance, was faced with challenges whereby their accounts were frozen by the Insurance Regular Authority which made payments of court fees impossible.
- vi. That I am informed by my advocate on record, which information I verily believe to be true due to the audit and heightened surveillance by the authority, communication with insurer was strained and/or broken down hence a delay in approval of payment and/or release of money to facilitate filing fees.
- vii. That the 30 days stay granted for stay of execution saw well as the time for lodging the appeal lapsed without filing the Appeal and the subsequent. Application for stay pending the hearing and determination of the appeal hence the need to seek an extension of time within which to lodge the Appeal.
- viii. That no prejudice will occasioned upon the Respondent if the Application herein is allowed and the orders sought granted
- ix. That delay in filing this appeal was not deliberate and has been explained

Decision

2. There are two limbs to this application. First and foremost, is on leave to be granted to the Applicant to file his Appeal out of time. Second, is on stay of execution pending the hearing and determination of the intended Appeal.
3. With regard to the first limb, the [Civil Procedure Act](#) Under Section 79 provides that an aggrieved party from the judgement of a trial court has 30 days to lodge an Appeal. However, in the same provision, the court is clothed with discretion to extend time so that an aggrieved party to litigation can have the opportunity to seek redress before a Superior Court. The guidelines under which to underpin discretion are now well settled as demonstrated in the following case law:
4. In the case of *Clophas Wasike v Mucha Swala (1984) eKLR* and *Leo Sila Mutiso V. Rose Hellen Wangari Mwangi* the court observed as follows:

“It is now well settled that the decision whether or not to extend the time for appealing is essentially discretionary. It is also well settled that in general the matters which this Court takes into account in deciding whether to grant an extension of time are first the length of the delay secondly, the reason for the delay, thirdly (possibly) the chances of the appeal succeeding if the application is granted and fourthly, the degree of prejudice to the respondent if the application is granted”.
5. In the same vein, in *Muringa Company Limited v Archdioceses of Nairobi Registered Trustees (2020) eKLR* the court buttressed as follows:

“Some of the considerations, which are by no means exhaustive, in an application for extension of time include the length of the delay involved, the reason or reasons for the delay, the possible prejudice, if any, that each party stands to suffer, the conduct of the parties, the need to balance the interests of a party who has a decision in his or her favour against the interest of a party who has a constitutionally underpinned right of appeal, the need to protect a party’s opportunity to fully agitate its dispute, against the need to ensure timely resolution of disputes; the public interest issues implicated in the appeal or intended appeal; and whether, prima facie, the intended appeal has chances of success or is a mere frivolity.



(See also the principles in the case of Nocholas Kiptoo Arap Korir Salat IEBC CA No. 16 of 2014

6. I have reviewed the affidavit evidence by the Applicant and there is sufficient cause why the intended Appeal was not filed within the statutory limit of 30 days. These court therefore exercise discretion to extend time in furtherance of justice in favour of the Applicant.
7. With regard to the second limb on stay of execution, Order 42 Rule 6(1) provides the framework upon which discretion can be exercised by a Judge to stay execution of the impugned judgement and decree to allow for the Appeal process to be prosecuted on the merits. The Court of Appeal in RWW vs EKW (2019) eKLR held as follows:

“The purpose of an application for stay of execution pending an appeal is to preserve the subject matter in dispute so that the rights of the appellant who is exercising the undoubted right of appeal are safeguarded and the appeal if successful, is not rendered nugatory. However, in doing so, the Court should weigh this right against the success of a litigant who should not be deprived of the fruits of his/her judgment. The Court is also called upon to ensure that no party suffers prejudice that cannot be compensated by an award of costs. Indeed, to grant or refuse an application for stay of execution pending appeal is discretionary. The Court when granting the stay however, must balance the interests of the Appellant with those of the Respondent.”
8. It is clear to this court that leave having been granted to the Applicant to file his Appeal out of time, if stay of execution is not granted against the impugned judgement of the trial court, the intended Appeal may be rendered nugatory. The questions being brought forward by the Applicant in the Memorandum of Appeal which will form the basis of the Appeal itself is certainly one which requires further interrogation by this court.
9. Consequently, the following orders shall abide:
 - a. Leave be and is hereby granted to the Applicant to file his Appeal out of time.
 - b. That the draft Memorandum of Appeal be deemed as duly filed within time.
 - c. The Deputy Registrar of the High Court to facilitate the supply of the typed record of the Lower Court Proceedings within a reasonable time and not later than 45 days from today’s date.
 - d. That stay of execution of the impugned judgement in CMCC 854/2018 be and is hereby granted.
 - e. The costs of these applications to abide the outcome of the Appeal

GIVEN UNDER MY HAND AND THE SEAL OF THIS COURT THIS 2ND DAY OF SEPTEMBER 2025

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R. NYAKUNDI
JUDGE

