



**Mochama & another v GMM (Suing as the Guardian and Next of Friend of DM – Minor) (Miscellaneous Civil Case E010 of 2025) [2025] KEHC 13255 (KLR) (18 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 13255 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NYAMIRA  
MISCELLANEOUS CIVIL CASE E010 OF 2025  
WA OKWANY, J  
SEPTEMBER 18, 2025**

**BETWEEN**

**DENNIS MOKAYA MOCHAMA ..... 1<sup>ST</sup> APPLICANT**

**MOGO AUTO COMPANY LIMITED ..... 2<sup>ND</sup> APPLICANT**

**AND**

**GMM (SUING AS THE GUARDIAN AND NEXT OF FRIEND OF DM – MINOR) ..... RESPONDENT**

**RULING**

1. The Court is called upon to determine the Application dated 14th May 2025 in which the Applicants seek, inter alia, an order of stay of execution of the decree in Nyamira CMCC No. E033 of 2023 and leave to appeal out of time against the judgment in Nyamira CMCC No. E067 of 2023.
2. The Application is premised on Sections 1A, 3A, and 79G of the *Civil Procedure Act*, Order 42 Rule 6(1)(2) & (6) and Order 51 of the *Civil Procedure Rules*, Section 5(b) of the *Insurance (Motor Vehicle Third Party Risks) Act*, and Article 159 of the *Constitution* of Kenya.
3. The Application is supported by the affidavit of Mr. Robert Ouma Njoga, Advocate, who attributes the delay in lodging the appeal to the loss of the court file by a clerk, restructuring of the instructing insurer, Occidental Insurance Co. Ltd, and inadvertence or oversight on the part of counsel.
4. The Application is opposed through the Replying Affidavit sworn on 27th May 2025. The Respondent contends that the Applicants have failed to demonstrate substantial loss likely to be suffered if execution proceeds. It is further argued that the delay in filing the Application is inordinate, the reasons advanced being internal administrative lapses which cannot be visited upon a successful litigant.



5. The Respondent further asserts that the security proposed by the Applicants is vague and insufficient as it neither specifies the amount nor the terms. He urges that if stay is to be granted, the Applicants should be compelled to deposit the entire decretal sum as security.

### Issues for Determination

6. Having considered the pleadings and submissions, I find that the issues arising for determination are as follows: -leave to file an appeal out of time; and (ii) Whether the prayer for stay of execution pending appeal is merited.
- (i) Whether the Applicants should be granted

### Leave to Appeal Out of Time

7. Section 79G of the *Civil Procedure Act* provides that: -

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... Provided that an appeal may be admitted out of time if the appellant satisfies the court that he had a good and sufficient cause for not filing the appeal in time.

8. In *Nicholas Kiptoo Korir arap Salat vs. IEBC & 7 Others* [2014] eKLR the Supreme Court held that: -

“Extension of time is not a right of any party. It is an equitable remedy... A party who seeks extension bears the burden of laying a basis to the satisfaction of the court... The delay should be explained... and the application must be brought without undue delay.”

9. In *Thuita Mwangi vs. Kenya Airways Ltd* [2003] eKLR the Court of Appeal outlined the factors to be considered as follows: -

- “(i) The period of delay;  
(ii) the reason for the delay;  
(iii) the arguability of the appeal;  
(iv) the degree of prejudice to the Respondent;  
(v) importance of compliance with timelines; and  
(vi) effect on administration of justice or public interest.”

10. Similarly, in *Leo Sila Mutiso vs. Rose Hellen Wangari Mwangi* [1999] 2 EA 231, it was held:

“The court has unfettered discretion but must consider length of delay, reason for delay, chances of appeal succeeding, and prejudice to the respondent.”

11. In the instant case, judgment was delivered on 12th February 2025 while the Application was filed on 14th May 2025, a delay of about 3 months. The Applicant explained that the delay was occasioned by



the resignation of the counsel's clerk and the restructuring at the instructing insurer. In *Itute Ingu & another vs. Isumael Mwakavi Mwendwa* [1994] eKLR, the Court of Appeal held that:

“...a mistake by counsel, particularly where such a mistake is bona fide, can entitle an applicant to the exercise of the court's discretion in his favour. But... the Court must, of necessity, examine the nature or quality of the mistake.”

12. Similarly, in *Belinda Murai & Others vs. Amos Wainaina* [1978] eKLR, it was held: -

“A mistake is a mistake. It is no less a mistake because it is an unfortunate slip. It should not necessarily debar a party from relief.”

13. I am satisfied that the delay of 3 months is not inordinate and that the explanation is reasonable. The mistakes of counsel should not be visited upon the Applicants. Leave to appeal out of time is therefore granted.

14. For the reasons that I have stated in this ruling, I find that the Applicants have established a case for the granting of orders for stay of execution. I therefore allow the Application in the following terms:-

i. Stay of Execution pending appeal is hereby granted to the Applicants on the following conditions: -

a. The Applicants shall pay to the Respondent half the decretal sum and the full sum of the costs awarded in the trial court being Kshs. 604,595/= and Kshs. 188,000/= respectively within 30 days from the date of this ruling.

b. The other half of the decretal sum shall be deposited in a joint-interest earning account, to be held in the names of the parties' advocates, within 45 days from the date of this Ruling.

c. The Applicants are hereby granted leave to appeal out of time and are directed to file and serve their Memorandum of Appeal within 30 days from the date of this Ruling.

ii. That in the event of failure to comply with Orders in a) to c) above, the Respondent shall be at liberty to proceed with execution of the judgment decree issued by the trial court.

15. The costs of this Application shall abide the outcome of the Appeal.

16. Orders accordingly.

**RULING DATED, SIGNED AND DELIVERED AT NYAMIRA VIRTUALLY VIA MICROSOFT TEAMS THIS 18<sup>TH</sup> DAY OF SEPTEMBER 2025.**

**W. A. OKWANY**

**JUDGE**

