



**Njue v Karimi (Miscellaneous Civil Case E103 of 2023)
[2024] KEHC 16634 (KLR) (19 December 2024) (Ruling)**

Neutral citation: [2024] KEHC 16634 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MURANG'A
MISCELLANEOUS CIVIL CASE E103 OF 2023
CW GITHUA, J
DECEMBER 19, 2024**

BETWEEN

JOSPAHT KARIUKI NJUE APPLICANT

AND

EVANGELINE KARIMI RESPONDENT

RULING

1. In the Notice of Motion dated 17th November 2023, the applicant, Josphat Kariuki Njue principally sought two substantive orders namely; grant of leave to lodge his intended appeal out of time against the decision of the trial court in Kigumo SPMCC No. E202 of 2021 and stay of execution of the impugned judgement pending hearing and determination of his intended appeal.
2. The application is anchored on the grounds stated on its face which are replicated in the depositions made by the applicant in the supporting affidavit sworn on 17th November 2023.
3. In a nutshell, the applicant contends that he is aggrieved by the decision of the lower court and he desires to challenge it on appeal but cannot do so since the time limited by the law for filing of appeals to the High Court has expired.

He claims that the delay in filing his intended appeal was not deliberate but was caused by circumstances beyond his control. He explained that when the trial court's Judgement was delivered on 13th July 2023, he instructed his advocates on record to obtain a copy thereof from the court for purposes of their review and advise but that owing to the bulk of judgements and proceedings awaiting typing, the court delayed in furnishing his advocates with a typed copy of the proceedings and Judgement; that after obtaining a typed copy of the court's judgement on an undisclosed date, a decision was made to file an appeal on both liability and quantum but at that time, the time limited for filing appeals had expired.



4. Regarding the prayer for stay of execution, the applicant contends that if the order was not granted as sought, the respondent would proceed to execute against him and he will suffer prejudice; that if the orders are not granted, the respondent is not likely to suffer any prejudice.
5. The court on 25th June 2014 directed that the application be canvassed by way of written submissions. The respondent duly filed her submissions dated 21st June 2024 but the applicant chose not to file any. His learned counsel, Ms Kiragu informed the court that she wished to solely rely on the applicant's supporting affidavit.
6. I have carefully considered the application, the affidavits on record and the written submissions filed on behalf of the respondent.
Having done so, I find that the key issue arising for my determination is whether the orders sought by the applicant are merited.
7. Starting with the prayer for grant of leave to file his intended appeal out of time, Section 79 G of the Civil Procedure Act (CPA) limits the time for filing appeals from the lower court to the High court to a period of 30 days. The proviso thereof however donates to this court wide and unfettered discretion to extend the aforesaid time or to admit an appeal filed out of time on terms that the court deemed just provided that sufficient cause had been demonstrated to justify the exercise of the courts discretion in the applicant's favour.
8. Like all other judicial discretions, the discretion in deciding whether or not to grant leave to file an appeal out of time must be exercised judiciously in accordance with established legal principles and not whimsically or arbitrarily.
9. In *Thuita Mwangi V Kenya Airways limited* [2003] eKLR, the Court of Appeal discussed the factors that a court ought to consider in determining such applications. The court expressed itself 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....”
10. In this case, with regard to the period of delay, I note that the impugned judgement was delivered on 13th July 2023. This means that the prescribed period for filing of appeals expired on or about 13th August 2023. The instant application was filed on 23rd November 2023 about three and a half months later.
11. When explaining his failure to file his intended appeal on time, the applicant claimed that he had instructed his advocates to obtain a certified copy of the impugned judgement to advise on whether or not he should file an appeal; that due to the trial courts work load, the court was unable to furnish his advocates with a typed copy of the judgement on time; that by the time the judgement was obtained and a decision was made to lodge an appeal on both liability and quantum, the time statutorily prescribed for filing of appeals had expired.
12. In my considered view, the reasons given by the applicant to explain first, the delay in filing his intended appeal on time and secondly, the delay in filing the instant application is not satisfactory.



To start with, the applicant did not avail to this court any evidence to prove that his advocates in fact applied for supply of a typed copy of the trial court's judgement and any efforts made to follow up on such a request if at all any had been made.

The applicant also failed to avail any evidence to prove when his advocates actually obtained a copy of the trial court's judgement in order to substantiate his claim that this was done after time to appeal had expired.

13. It is worth noting that the respondent has availed evidence in her supplementary affidavit which confirms that a certified copy of the trial court's judgement was available from as early as 19th July 2023, only six days after the judgement was delivered.
14. As stated earlier, extension of time for filing of appeals is discretionary and for an applicant to deserve the exercise of that discretion, he must demonstrate that the delay in filing the appeal on time was not deliberate and was not caused by his lack of diligence. Put differently, the applicant must show that there was sufficient cause for failure to file the intended appeal on time.
In this case, it is my finding that the applicant's delay of over 3 ½ months is long and inordinate and has not been sufficiently explained.
15. In view of the foregoing, I am satisfied that the applicant is not deserving of the exercise of the court's discretion in his favour. The applicant's prayer for leave to file his intended appeal out of time is consequently dismissed.
16. Considering that the prayer for extension of time to enable the applicant file his intended appeal out of time has been dismissed, the prayer for stay of execution of the impugned judgment pending the intended appeal falls by the way side since it does not have any legs to stand on.
17. In the premises, the application fails in its entirety and it is hereby dismissed with costs to respondent.
It is so ordered.

DATED, SIGNED AND DELIVERED AT MURANG'A THIS 19TH DAY OF DECEMBER, 2024.

HON. C. W. GITHUA

JUDGE

In the Presence of:

Mr. Kariaria for the Respondent.

No Appearance for the Applicant.

Ms. Susan Waiganjo, Court Assistant

