



**Okindu v Agricultural Society of Kenya & another (Civil Miscellaneous Application E230 of 2022) [2023] KEHC 18405 (KLR) (29 May 2023) (Ruling)**

Neutral citation: [2023] KEHC 18405 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
CIVIL MISCELLANEOUS APPLICATION E230 OF 2022**

**AN ONGERI, J**

**MAY 29, 2023**

**BETWEEN**

**PIUS ONDIMU OKINDU ..... PLAINTIFF**

**AND**

**THE AGRICULTURAL SOCIETY OF KENYA ..... 1<sup>ST</sup> RESPONDENT**

**FRANCIS GICHINGIRI THANDI ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. The application coming for consideration in this ruling is the one dated 7/4/2022 seeking leave to appeal out of time against the judgment in Small Claims Case no. 500 of 2021 delivered on 27/1/2022.
2. The application is based on the grounds that section 79G of the *Civil Procedure Act* provides that an appeal be filed within 30 days from the date of delivery of judgment.
3. Further that the reason for delay was that the appellant was not able to get a copy of the typed judgment in good time due to scaled down court services.
4. The applicant also stated in the grounds on the face of the application that the intended appeal is valid and stands very high chances of succeeding and that he is ready to prosecute the appeal.
5. The respondent filed a replying affidavit dated 7/7/2022 in which it is deponed that judgement was delivered on 27/1/2022 and contrary to the applicant's allegation the applicant did not lodge a notice of appeal within the prescribed time. That he was aware that the 1<sup>st</sup> respondent advocate were able to obtain a copy of the judgement in the matter and forward the same to the 1<sup>st</sup> respondent by 14/2/2022. That it is therefore not true that the delay in lodging an appeal was because of scaling down of court services as alleged.
6. It was indicated that the respondents stand to suffer prejudice and injustice should the application be allowed as the applicants has slept on his rights and the intended appeal is merely an afterthought.



7. The respondent filed their submissions and argued that the court has discretion to extend time and such discretion can only be exercised in favor of a party who has demonstrated good and sufficient cause. That the singular reason given for the delay was due to the scaled down court operations and the applicant's advocates were not able to obtain a copy of the judgement. However, the reason given is not sufficient to warrant this court to exercise its discretion and enlarge time for filing of the appeal
8. The sole issue for determination in this application is whether the applicant should be granted leave to file the appeal out of time.
9. The governing legal provision in section 79G of the *Civil Procedure Act* which provides as follows;
 

“ Every appeal from a subordinate court to the High Court shall be filed within a period of 30 days from the date of the decree or order appealed against excluding from such period anytime which the lower court may certify as having been requisite for 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.”
10. It is plain therefore that the Court, when considering an application such as the instant one, has unfettered discretion; and therefore need only concern itself with whether justifiable cause has been shown to warrant such exercise of discretion.
11. For this reason, the principles laid down by the Supreme Court in *Nicholas Kiptoo Korir arap Salat vs. IEBC & 7 others* [2014] eKLR are pertinent; namely:
 

“ the under-lying principles that a Court should consider in exercise of such discretion:

  1. Extension of time is not a right of a party. It is an equitable remedy that is only available to a deserving party at the discretion of the Court;
  2. A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the court;
  3. Whether the court should exercise the discretion to extend time, is a consideration to be made on a case to case basis;
  4. Whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the Court;
  5. Whether there will be any prejudice suffered by the respondents if the extension is granted;
  6. Whether the application has been brought without undue delay.”
12. I find that the judgment was delivered on 27/1/2022 and the application seeking leave was filed on 7/4/2022 after a period of one month's delay.
13. I find that the reason for the delay is plausible and I find that it is in the interest of justice that the leave to appeal out of time on the following condition;
  - i. That the intended appeal be filed within 30 days of this date.
  - ii. That the appeal be prosecuted within sixty days of this date.



**DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS  
29<sup>TH</sup> DAY OF MAY, 2023.**

.....

**A. ONGERI**

**JUDGE**

In the presence of:

.....for the Plaintiff

.....for the 1<sup>st</sup> Defendant

.....for the 2<sup>nd</sup> Defendant

