



**Githinji v M’Kiunga & another (Miscellaneous Application
12 of 2022) [2022] KEHC 3326 (KLR) (30 June 2022) (Ruling)**

Neutral citation: [2022] KEHC 3326 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
MISCELLANEOUS APPLICATION 12 OF 2022
EM MURIITHI, J
JUNE 30, 2022**

BETWEEN

SOLOMON GITHINJI APPLICANT

AND

SAMWEL MBAJO M’KIUNGA 1ST RESPONDENT

EDWARD MUTEMBEI 2ND RESPONDENT

RULING

1. The appellant seeks extension of time to file appeal against the judgment of the trial court delivered on November 18, 2021. At the time of filing the application for extension of time on 3/3/2021, the application was 2 months overdue for the filing of the Memorandum of appeal which ought to have been filed 30 days after the judgment on November 18, 2021.
2. It is not inordinate delay. However, the explanation given for the delay place the fault squarely in the applicant’s office in terms that “the delay in filing the appeal was occasioned by the fact that this office file was misplaced and could not be traced in the office and by the time it was found, the 30-day windows for filing an appeal had lapsed.”
3. There is no explanation as to why the application for extension was not filed shortly on expiry of the 30 days window with copies obtained from the court record. The suggestion given orally in court that the client took time to give instructions to appeal was not supported by evidence.
4. The Respondent pointed out that they had already settled the decretal sum of Kshs. 792,230 by cheque payment on 4/3/2022 and submitted that the application for extension of time was “an afterthought coming hot on the heels of the settlement of the decretal sum.”



5. To be sure, the application was filed on 3/3/2022 and the payment by Cheque if due on 4/3/22 was later in time and it cannot be said to have an afterthought application. The application has merit and it shall be granted.
6. However, as the application was occasioned by the inefficiencies of the applicant in as submitted giving instructions to appeal late and if this counsel in misplacing the office file and not seeking to reconstruct his file from the court records, the applicant must be mulcted in costs for making this application necessary.

Orders

7. Accordingly, for the reasons set out above the court grants the application for extension of time to file appeal subject to the payment of costs assessed at Ksh.20,000/= to the Respondents' counsel and filing of the Record of Appeal both to be done within 30 days from the date of this ruling.

Order accordingly.

DATED AND DELIVERED ON THIS 30TH DAY OF JUNE 2022.

EDWARD M. MURIITHI

JUDGE

APPEARANCES

M/S Maitai Rimita & Co. Advocates for the Applicant.

M/S Mithega & Kariuki Advocates for the Respondent.

