



**Gisaga v Kiruja (Environment and Land Appeal E008 of 2023)  
[2023] KEELC 21896 (KLR) (30 November 2023) (Ruling)**

Neutral citation: [2023] KEELC 21896 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT CHUKA  
ENVIRONMENT AND LAND APPEAL E008 OF 2023  
CK YANO, J  
NOVEMBER 30, 2023**

**BETWEEN**

**ABDALLA MUTEMBEI GISAGA ..... APPELLANT**

**AND**

**PATRICIA KATHURE KIRUJA ..... RESPONDENT**

**RULING**

1. Before me is a Notice of Motion dated May 9, 2023 brought under section 79G of the [Civil Procedure Act](#). The motion seeks an order to admit the appeal herein out of time.
2. The motion is supported by the grounds on its face and a supporting affidavit sworn by Abdalla Mutembei Gisaga on May 9, 2023 together with annexures thereto wherein the applicant avers that he filed the appeal herein on 24.04.2023 challenging the decision of the Business Premises Rent Tribunal that was delivered on March 3, 2023. The applicant states that earlier on April 4, 2023, he had filed Chuka ELC Misc. Application No. E011 of 2023 seeking stay of execution of the tribunal's judgment. The applicant further states that he has been advised that the appeal was filed outside the statutory period hence this application.
3. The reason for the delay is attributed to the challenges that come with self-representation. It is the applicant's contention that the delay is not inordinate and that the respondent will not suffer any prejudice should this application be allowed.
4. In his submissions dated August 17, 2023, the applicant cited the provisions of section 79G of the [Civil Procedure Act](#) and submitted he has no legal representation and was not only unaware of the time limits, but was also constrained in seeking assistance in instituting the appeal.
5. The applicant relied on the case of [Charles N. Ngugi v ASL Credit Limited](#) [2022] eKLR and [James Aggrey Mabero Alare v Guardian Coaches Bus t/a Nyamira Luxury Express](#) [2017] eKLR, and



submitted that the delay of 21 days is not inordinate in the circumstances. The applicant urged the court to excuse the delay and allow the application in order for substantive justice to be dispensed.

6. The application has been opposed by the Respondent through a replying affidavit dated 21<sup>st</sup> July, 2023. The respondent also cited section 79 G of the Civil Procedure Act and relied on the case of Edith Gichungu Koine vs Stephen Njagi Thoithi [2014] eKLR and argued that the applicant has not provided any explanation for the delay of 21 days, adding that self-representation is not a reason for flouting procedure. It is the respondent's contention that the application has no merit and should be dismissed with costs.
7. In her submissions filed on October 13, 2023, the respondent reiterated the averments in the replying affidavit and further relied on the case of Nicholas Kiptoo Arap Korir Salat vs Independent Electoral & Boundaries Commission & 7 others [2013] eKLR, George Kiptabu Lelei & another vs Fanikiwa Limited [2019] eKLR, Dilpack Kenya Limited vs William Muthama Kitonyi [2018]eKLR.
8. It is also the respondent's submission that the intended appeal discloses no triable issues and has no reasonable chances of success, adding that the same is frivolous, lacking in substance and an afterthought whose intention is to delay the execution of the proceedings in the lower court. The respondent argued that she would suffer great financial loss if the application is allowed.
9. It is the respondent's submission that the application does not satisfy the prerequisites for admission of appeal out of time, is brought in bad faith, lacks merit and should be dismissed with costs.
10. I have considered the application, the response and the submissions made. My mandate to intervene has been invoked substantively under Section 79 G of the Civil Procedure Act which provides:

“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, excluding from such period any time which the lower court may certify as having been requisite for the 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 in time.”

11. The principles that guides the court in the exercise of its mandate under the said section are set out in the very case law that the applicant and the respondent have relied upon. In Nicholas Kiptoo Arap Korir Salat -vs- Independent Electoral & Boundaries Commission & 7 others (supra), the Supreme Court stated;

“..... it is clear that the discretion to extend time is indeed unfettered. It is incumbent upon the applicant to explain the reasons for delay in making the application for extension and whether there are any extenuating circumstances that can enable the court to exercise its discretion in favour of the applicant.....

“....we derive the following as the underlying principles that a court should consider in exercising such discretion:

- a) 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.
- b) A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the court.



- c) Whether the court should exercise the discretion to extend time is a consideration to be made on a case-to-case basis.
  - d) Whether there is reasonable reason for the delay, the delay should be explained to the satisfaction of the court.
  - e) Whether there will be any prejudice suffered by the respondent if the extension is granted.”
12. Therefore, the factors to consider in exercising discretion are that, I am supposed to take into consideration the length of the delay, reason for the delay, possibly, the arguability of the intended appeal and any prejudice to be suffered by the opposite party should the relief sought by the applicant be granted.
13. Starting with the period of delay, it is evident from the record that the impugned judgment was delivered on March 3, 2023. The appeal sought to be validated was filed on April 24, 2023, being a period of twenty-one (21) days delay from the date it ought to have been filed. The application under consideration which seeks the court’s intervention was filed on May 9, 2023, being a period of about one (1) month and six (6) days from the time the appeal ought to have been filed.
14. In the affidavit in support of the application, the applicant has sworn that on April 4, 2023 he had filed Chuka Misc. Application No. E011 of 2023 seeking stay of execution of the tribunal’s judgment. The court has perused that file. The applicant has explained that he is a layman acting in person and was not aware of the strict timelines under the law. Of course, it is the law that ignorance of the law is no defence. However, in my view, and considering the circumstances of this case, it is my opinion that the delay is not inordinate.
15. The next factor falling for consideration is the explanation that the applicant has proffered for the failure to file the appeal timeously. The reason given by the applicant is attributed to the challenges that come with self-representation. I find the reason for the delay well explained and therefore excusable.
16. On the chances of the appeal succeeding, I have perused the memorandum of appeal herein. The applicant intends to challenge the entire decision of the tribunal, including the award of Kshs.1,650,000/= for renovations. It is the applicant’s contention that the invoices used in making the said award were for different premises. In law, an arguable appeal/intended appeal is one that need not succeed but one that is not frivolous and warrants the court’s interrogation on the one hand and the court’s invitation to the opposite party to respond thereto. In my view the issues raised in the intended appeal are not frivolous and are arguable.
17. The respondent submitted that she will suffer great prejudice and injustice if the application is allowed as she stands to suffer great financial loss. In my view, the respondent can adequately be compensated in form of costs and interest in the event the intended appeal will be in her favour.
18. On the totality of the above assessment and reasoning, I am satisfied that the applicant has satisfied the prerequisite for granting of a relief under section 79 G of the *Civil Procedure Act*. I therefore proceed to make orders as follows:
  - 1) The applicant’s application dated May 9, 2023 be and is hereby allowed in the following terms:
    - a) Leave of extension of time within which to file appeal out of time is granted to the applicant.



- b) The period within which to comply with the lodging and service of the memorandum of appeal is extended to the date which the memorandum of appeal was filed and served.
- c) The memorandum of appeal filed on April 24, 2023 is therefore hereby deemed as properly filed and served.
- d) Costs of the application to abide the outcome of the appeal.

19. Orders accordingly.

**DATED, SIGNED AND DELIVERED AT CHUKA THIS 30<sup>TH</sup> NOVEMBER, 2023**

**In the presence of:**

Court Assistant – Martha

Appellant/Applicant in person

Ms. Anguche for the Respondent

**C.K YANO,**

**JUDGE**

