



**Macharia v Gakunju (Environment & Land Miscellaneous Case
E023 of 2024) [2025] KEELC 3936 (KLR) (23 May 2025) (Ruling)**

Neutral citation: [2025] KEELC 3936 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYERI
ENVIRONMENT & LAND MISCELLANEOUS CASE E023 OF 2024**

**JO OLOLA, J
MAY 23, 2025**

BETWEEN

JOHN NJAGI MACHARIA APPLICANT

AND

JAGI GAKUNJU RESPONDENT

RULING

1. By the Notice of Motion dated 18th September, 2024, John Njagi Macharia (the Applicant) prays for the following:
 - a. Spent;
 - b. That the Honourable Court be pleased to grant leave to the Appellant/Applicant to appeal out of time against the said Ruling delivered by Honorable Damacline Nyakundi, on 30th May, 2024 in Mukurwe-ini Misc Civil App 2 of 2023; Jagi Gakunju –vs- John Njagi Macharia emanating from Nyeri Business Premises Rent Tribunal in BRPT Case No. 26 of 2019;
 - c. That the said leave does operate as stay of proceedings;
 - d. That the costs be provided for; and
 - e. Any other order that meets the ends of justice.
2. The application is supported by an affidavit sworn by the Applicant and is premised on the grounds inter alia, that:
 - a. The Court delivered a Ruling in the said Mukurweini case on the 30th day of May, 2024;
 - b. The Applicant appealed the said Ruling vide Nyeri High Court Civil Appeal No. E035 of 2024 ;



- c. That the said Appeal was struck out by the High Court on 27th June, 2024 on the grounds that it had been filed in the wrong forum;
 - d. That the Applicant being a layman was not aware that a dispute under the Landlord and Tenant (Shops, Hotel and Catering Establishments) Act Cap 301, cannot be resolved by the High Court as established in Article 165 (3) of *the Constitution* of Kenya 2010;
 - e. That the mistake of an Advocate should not be visited upon a layman;
 - f. That as a result the time for filing an appeal in the Environment and Land Court had run out;
 - g. That the Applicant is apprehensive that the Respondent may move to execute the decree; and
 - h. That it is in the interest of Justice that the Applicant be allowed to appeal against the Ruling.
3. Jagi Gakunju (the Respondent) is opposed to the grant of orders sought. In his Grounds of Opposition dated 7th October, 2024, the Respondent states that:
- a. The application is incompetent, manifestly an abuse of the Court process and has no foundation to stand on.
 - b. The Applicant did not appeal against the Judgment of the Business Premises Rent Tribunal given, in BRPT Case No. 26 of 2019 Consolidated with BRPT No. 2 of 2019);
 - c. That the intended Appeal has no substance. Appealing against the order adopting the award of the tribunal without appealing the main judgment rendered by the Tribunal is superfluous and will be nothing but an academic exercise;
 - d. The Honourable Court in the Ruling given on 30.5.2024, merely adopted the order of the BRPT Tribunal given on 14.4.2022 as mandated under section 14 (1) of the Landlord and Tenants (Shop, Hotels and Catering Establishment Act).
 - e. The Honourable Court's jurisdiction was limited to adopting the order as extracted by the Honourable Tribunal and after rendering the Ruling, the Magistrates Court became functus officio;
 - f. The proceedings were concluded with the issuance of the decree and there is nothing to be stayed;
 - g. The Applicant has not come to Court with clean hands and is not acting in good faith as his intention is to delay the execution of the decree;
 - h. The discretion of the Court cannot be sought to be exercised where the wrong provisions of the law has been invoked and important steps not followed. This application is meant to mislead the Court and is an abuse of the Court process;
 - i. The application is an afterthought; and
 - j. No prejudice will be occasioned to the Applicant if the orders sought are not granted.
4. I have carefully perused and considered the application as well as the Grounds filed in opposition thereto. I have similarly perused and considered the submissions and authorities placed before the court by the Learned Counsel representing the Applicant.



5. The Applicant has lodged the application before the Court seeking leave to file an appeal out of time against a Ruling delivered on 30th May, 2024 in Mukurwe-ini Miscellaneous Civil Application No. 2 of 2023. It is also his plea that the said leave if granted do operate as a stay of the proceedings.
6. In regard to the time for appeal Section 79 G of the *Civil Procedure Act* provides as follows:

“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.”
7. Considering the principles applicable for extension of time in *Omar Shurie –vs- Marian Rashe Yafar (Civil Application No. 107 of 2020)* UR, the Court of Appeal held thus:

“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.”
8. In the matter before me, it is not in dispute that the intended Appeal is sought against the Ruling delivered in Mukurweini Principal Magistrates Court on 30th May, 2024. Aggrieved by the said Ruling, the Applicant moved some 20 days later to file an application dated 20th June, 2024 in Nyeri High Court Civil Appeal No. E035 of 2024. The matter was placed before Honourable Justice Kizito Magare who proceeded on 27th June, 2024 to issue orders as follows:
 - 1) The matter is not certified as urgent.
 - 2) A dispute under the Landlord and Tenant (Shops, Hotels and Catering Establishments Act) Chapter 301 has no place in this Court.
 - 3) The Appeal is struck out in limine.
 - 4) The file is closed.”
9. Considering the time taken, it was clear to me that the Appeal though filed in the wrong forum was filed within the time stipulated under Section 79G of the *Civil Procedure Act*. The Appellant who was then represented by an Advocate has explained that being a layman, he was unaware of which court to lodge the Appeal and that it was the Advocate who misled him in filing the Appeal in the wrong forum.
10. Considering a similar matter in *CFC Stanbic Limited –vs- John Maina Githaiga & Another (2013) eKLR*; the Court of Appeal held as follows:

“This Court is guided by the case of *Lee G Muthoga V Habib Zurich Finance (K) Ltd & Another, Civil Application No. NAI 236 OF 2009*, where this Court held: ‘It is a widely accepted principle of law that a litigant should not suffer because of his advocate’s oversight.’”



In the instant appeal, we are of the view that the appellant should not suffer because of the mistakes of its counsel."

11. Similarly, in the matter before me, I am of the view that the Applicant should not suffer because of the mistakes of his counsel. Accordingly, I allow the Motion dated 18th September, 2024 in terms of prayer No. (b) thereof. The Applicant has 21 days from today within which to lodge the Appeal.

12. The costs of this application shall abide the outcome of the Appeal.

RULING DATED, SIGNED AND DELIVERED IN OPEN COURT AND VIRTUALLY AT MOMBASA THIS 23RD DAY OF MAY, 2025

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J.O. OLOLA

JUDGE

In the presence of:

a. Ms. Firdaus Court Assistant.

b. Mr. Karanja Maina Advocate for the Applicant

c. Ms. Wangari holding brief for Mr. Mahinda Advocate for the Respondent

