



**Miyanji & another v Unity Auto Tyre Enterprises (Environment & Land
Miscellaneous Case E090 of 2024) [2025] KEELC 4206 (KLR) (4 June 2025) (Ruling)**

Neutral citation: [2025] KEELC 4206 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT & LAND MISCELLANEOUS CASE E090 OF 2024**

SM KIBUNJA, J

JUNE 4, 2025

BETWEEN

MOHAMED NUNIR MIYANJI 1ST APPLICANT

YASIN ABDULLA MINYANJI 2ND APPLICANT

AND

UNITY AUTO TYRE ENTERPRISES RESPONDENT

RULING

[Notice of Motion Dated 21st November 2024]

1. The applicants moved the court through the notice of motion dated the 21st November 2024, seeking for leave to appeal out of time against the ruling of the Hon. Gakuhi Chege, Chairman, and Hon. Joyce Osodo, in Mombasa Business Premises Rent Tribunal Case No. 225 of 2023, delivered on 27th November 2023. The application is premised on the three (3) grounds on its face and supported by the affidavit of Yasin Abdulla Minyanji, 2nd applicant, sworn on the 21st November 2024, inter alia deposing that the applicants were aggrieved with the ruling of 27th November 2023, and preferred an appeal; that however, they were not able to give instructions on filing of the appeal before the statutory time lapsed on 27th December 2023 as the 2nd applicant who had authority to swear and make pleadings fell ill and travelled to the United Kingdom for treatment, and hence this application.
2. The respondent opposed the application through their four grounds of opposition dated 13th January 2025, inter alia that there has been undue delay in filing this application and is an afterthought; that no memorandum of appeal has been filed and the intended appeal is hopeless, lacks merit and has no chance of success.



3. The court gave directions for filing and exchanging replies and submissions on 14th January 2025. Thereafter, the learned counsel for the applicants and respondent filed their submissions dated 17th March 2025 and 18th March 2025 respectively that the court has considered.
4. The following are the issues for the determinations by the court:
 - a. Whether the applicants have made a reasonable case for leave to file appeal out of time to be granted.
 - b. Who pays the costs?
5. The court has carefully considered the grounds on the notice of motion and opposition, affidavit evidence, submissions by the learned counsel, superior courts decisions cited thereon, and come to the following findings:
 - a. From the submissions filed, the counsel appear to differ on the guiding provision of the law dealing with extension of time to file appeals. On one part, the learned counsel for applicants relied on section 79G of the Civil Procedure Act chapter 21 of Laws of Kenya, that provides that:

“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.”

And inter alia submitted that the appellants have given sufficient explanation for the delay as the 2nd applicant, who had authority to swear and make pleadings, had gotten ill after the Tribunal ruling of 27th November 2023, and had to travel to the United Kingdom for treatment as evinced by the medical officer’s note and air tickets marked “YAM-3 and YAM-4” that are attached to the supporting affidavit. The counsel referred to the case of Charles N. Ngugu versus ASL Credit Limited [2022] eKLR, where a delay of two months was found not to be inordinate, and asked the court to equally find so in the instant matter.

- b. On the other part, the learned counsel for the respondent referred to section 15(1) of the Landlord and Tenant (shops, hotel and catering establishment) Act which provides that:

“Any party to a reference aggrieved by any determination or order of a Tribunal made therein may, within thirty days after the date of such determination, appeal to the Environment and Land Court:

Provided that the Environment and Land Court may, where it is satisfied there is sufficient reason for so doing, extend the said period of thirty days upon such conditions, if any, as it may think fit.”

And, submitted that the medical note provided showed the 2nd applicant was admitted in hospital on 16th December 2023 and discharged on 10th January 2024 after stabilizing. That the 2nd applicant has not explained why he did not give instructions after being discharged on 10th January 2023, and before travelling to the United Kingdom on the 7th March 2024. That there are no medical documents availed to confirm that the 2nd applicant travelled to the United



Kingdom for medical attention and therefore no sufficient reason for the eleven (11) months delay has been presented by the applicants.

- c. The counsel for the respondent cited the case of *Nicholas Kiptoo Korir arap Salat versus IEBC & 7 Others* [2014] eKLR, where the Supreme Court inter alia enunciated the principles to be considered in applications for leave to appeal out of time, as follows:

“The underlying principles a court should consider in exercise of such discretion should include:

- a. Extension of time is not a right of any 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 by case basis;
- d. Whether there is a 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;
- f. Whether the application has been brought without undue delay.”

And further submitted that there has been inordinate delay in filing the application, and whatever issues the applicants intended to raise in the appeal can be dealt with through the pending Mombasa BPRT NO. E176 of 2023, that is between the same parties.

- d. The court has perused the medical note and air ticket attached to the supporting affidavit and noted the following;
- i. That the medical note is by Mohamed Hassan, medical officer, Coast General Teaching & Referral Hospital, and communicated as herein below;

“To Whom It May Concern

Re: Medical Report For Yasin Miyanji, Male, 58 Years, OP/
NO.1136743/24

The above named person was admitted to this facility as a case of Hypertensive emergency.

He was admitted on the 16th December 2023 and treated the high blood pressure was stabilised and discharged through the medical out patient clinic on 10th January 2024.

Thanks in advance.

{Signature}

Mohamed Hassan

Medical Officer”



- ii. The two air tickets are for 7th March 2024 for Mombasa to Nairobi [KQ 8711 – 06:10 to 07:55], and Nairobi to London [KQ 0100 – 09:00 to 15:30].

That as the impugned Tribunal ruling was delivered on 27th November 2023, the applicants have not explained or attempted to explain why the instructions to appeal had not been given before the 2nd applicant was admitted on the 16th December 2023. There is also no evidence presented to the court to suggest that the 2nd applicant's health condition that had stabilised as at the time of discharge on 10th January 2024, had worsened to make him incapable to give instructions to their counsel on the appeal and or to seek for leave to file the appeal out of time as time had lapsed on or about 27th December 2023. Further, there is no evidence availed to the court to show the 2nd applicant's travel to the United Kingdom on the 7th March 2024 was for medical purposes. I also note that the applicants have not disclosed when the 2nd applicant returned to the country after travelling to the United Kingdom of 7th March 2024, to assist the court in determining whether they acted without inordinate delay when they filed the instant application on 26th November 2024.

- e. Applying the principles in *Nicholas Kiptoo Korir Arap Salat case* [supra], to the instant application, I find the eleven months delay has not been sufficiently explained, and is therefore inordinate. The applicants have therefore failed to show to the satisfaction of the court that they are deserving of the equitable remedy of extension of time to file appeal out of time, and I agree with the respondent's contention that the parties have the opportunity to canvass their contentious issues through the pending reference being Mombasa BPRT NO. E 176 of 2023. This leads the court to the finding that the application is without merit and should be struck out.
 - f. Under section 27 of the *Civil Procedure Act* chapter 21 of Laws of Kenya, costs follow the event unless where for good cause the court orders otherwise. In this this instance, I do not find good cause to deviate from that common edict and the respondent is awarded costs.
6. Flowing from the foregoing determinations, the court finds and orders as follows:
- a. That the notice of motion dated the 21st November 2024 and filed on 26th November 2024 is without merit.
 - b. That the said application is hereby struck out with costs.

It is so ordered.

DATED, SIGNED AND VIRTUALLY DELIVERED ON THIS 4TH DAY OF JUNE 2025.

S. M. KIBUNJA, J.

ELC MOMBASA.

He Presence Of:

Applicants : M/s Sidinyu

Respondent : Mr. Mwangi Chege

Shitemi-court Assistant.

S. M. KIBUNJA, J.

ELC MOMBASA.

