



**Owiti v Butt & another (Both sued as administrators of the Estate of Shaid Butt - Deceased) (Miscellaneous Civil Application E097 of 2024) [2025] KEHC 1900 (KLR) (21 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 1900 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MOMBASA  
MISCELLANEOUS CIVIL APPLICATION E097 OF 2024**

**J NGAAH, J**

**FEBRUARY 21, 2025**

**BETWEEN**

**MATTHEW OCHIENG OWITI ..... APPLICANT**

**AND**

**REGINE BUTT ..... 1<sup>ST</sup> RESPONDENT**

**HAROON BUTT ..... 2<sup>ND</sup> RESPONDENT**

**BOTH SUED AS ADMINISTRATORS OF THE ESTATE OF SHAID BUTT - DECEASED**

**RULING**

1. The applicant’s application is a motion dated 24 May 2024 expressed to be brought under Sections 1A, 1B and 3A of the *Civil Procedure Act*, cap. 21 and Order 42 Rule 6; Order 51 Rule 1 of the Civil Procedure Rules, 2010. The applicant seeks the order that:

“1. That the Honorable Court be pleased to grant the Applicant leave to file the Appeal out of time against the Ruling of the Honorable Resident Magistrate Noelyne Akee Reuben delivered on 12<sup>th</sup> April, 2024 in CMCC No. 1099 of 2019 at Mombasa Mathew Ochieng Owiti Versus Regine Butt And Haroon Butt both sued as administrators of the estate of Shahid Butt (Deceased).”

The applicant has also sought for an order on costs.

2. The application is supported by an affidavit sworn on 24 May 2024 by Mr. Peter Mung’oma, the learned counsel for the applicant.

According to Mr. Mung’oma, the applicant instituted a suit against the respondents in Mombasa Chief Magistrates Court as Civil Case No. 1099 OF 2019; Mathew Ochieng Owiti versus Regine Butt and



Haroon Butt, both sued as administrators of the estate of Shahid Butt (Deceased). On 12 April, 2024 the court delivered its ruling but without notice to the parties.

3. And even after the ruling had been delivered, the ruling was posted under a wrong case number on the Case Tracking System portal; to be precise, it was uploaded on the system as Case no. 1099 of 2020 instead of Case No. 1099 of 2019. As a result of this error on the part of the court, the applicant was neither alerted of the availability of the ruling nor could he access it.
4. It is only on 24 May, 2024, that counsel for the applicant discovered that the ruling had been delivered on 12 April, 2024 without any notice to parties. By this time, the limitation period by which the applicant ought to have filed an appeal had lapsed. It is for this reason that the applicant seeks leave to file the appeal out of time.
5. The respondents did not file any response to the application although in their submissions, they have referred to a replying affidavit purportedly sworn on 4 December 2024 . There is no such replying affidavit uploaded on the Case Tracking System portal.
6. In the absence of any evidence to the contrary, I am entitled to accept the applicant's evidence that indeed the impugned ruling was delivered without notice to the parties and that it was posted on the Case Tracking System portal under a wrong file number. It follows that it was impossible for the applicant to have known when the ruling was delivered and, even when it realized when the ruling had been delivered, the time by which it ought to have filed the appeal had lapsed.
7. It follows that the delay in filing the appeal can only be attributed to the court and should not be visited upon the applicant. I note that the current application was filed immediately after the discovery of when the ruling had been delivered.
8. In these circumstances, I am persuaded to exercise my discretion in favour of the applicant under Order 50 Rule 6 and extend time within which the applicant ought to file his appeal. This rule reads as follows:
  6. Where a limited time has been fixed for doing any act or taking any proceedings under these Rules, or by summary notice or by order of the court, the court shall have power to enlarge such time upon such terms (if any) as the justice of the case may require, and such enlargement may be ordered although the application for the same is not made until after the expiration of the time appointed or allowed: Provided that the costs of any application to extend such time and of any order made thereon shall be borne by the parties making such application, unless the court orders otherwise.
9. Accordingly, the applicant is directed to file and serve his appeal within fourteen days of the date of this ruling. The costs of the application shall abide the outcome of the appeal. Orders accordingly.

**SIGNED, DATED AND DELIVERED ON 21 FEBRUARY 2025**

**NGAAH JAIRUS**

**JUDGE**

