



REPUBLIC OF KENYA



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GW (Through JBW Being the Guardian of GW) v Kimani (Miscellaneous Civil Application E204 of 2023) [2025] KEHC 5241 (KLR) (21 March 2025) (Ruling)

Neutral citation: [2025] KEHC 5241 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
MISCELLANEOUS CIVIL APPLICATION E204 OF 2023**

**A MSHILA, J
MARCH 21, 2025**

BETWEEN

GW (THROUGH JBW BEING THE GUARDIAN OF GW) APPLICANT

AND

JAMES KIMANI RESPONDENT

RULING

1. The Applicant filed a Notice of Motion dated 9th October, 2023; the application was brought under the provisions of Section 79G the *Civil Procedure Act* and Order 51 Rule 1 of the Civil Procedure Rules 2010. The Applicant prayed for the following Orders;
 - a. That this Honourable Court be pleased to grant leave to the Applicant to file the appeal out of time
 - b. That such leave act as a stay for further proceedings in Githunguri Principal Magistrates Court Civil Suit No.9 of 2015 James Kimani vs GW until the appeal is heard and determined.
 - c. That costs of the application do abide the final decision of the intended appeal.

Applicants Submissions

2. The application is based on the grounds found on the face of the application and on a supporting affidavit made by the Applicant on the 9th October, 2023.
3. The final ruling in Githunguri Principal Magistrates Court Civil Case No. 9 of 2015 was delivered on the 2nd March, 2023; and on the 10/03/2023 the Applicant applied for certified copies of the proceedings and judgment; he paid for the proceedings on 12/09/2023 which were certified and furnished for collection on 29/09/2023; these were accompanied with the Certificate of Delay dated



3/10/2023 and that the delay was occasioned by the courts inability to have the proceedings typed and certified within the stipulated timelines.

4. He annexed a draft Memorandum of Appeal marked as 'JB8' to the application and contends that the appeal had high chances of succeeding; that had the proceedings been availed to him on time he would have filed his appeal in good time.
5. The applicant prayed that his application be allowed.

Respondents Submissions

6. The Respondent opposed the application and relied on the Replying Affidavit made on the 24th January, 2024; The Respondent submitted that the relief sought is an equitable remedy and the Applicant should have been honest to the Court and ought to have disclosed to the Court that the decree was passed on 29/04/2021 and that the decree was never appealed against; the Applicant is therefore guilty of non-disclosure and does not endear himself to benefit from this equitable remedy
7. The Respondent further contends that the Applicant was a stranger to these proceedings as he was not the real Judgment Debtor; GW was the real Judgment Debtor and he did not appeal against the judgment;
8. The order of Guardian Ad Litem was obtained on 31/10/2022 which was one and a half (1½) years after the judgment and the Respondent submitted that even if it were to be assumed that the Applicant was a beneficiary of the said Order for Guardianship the same cannot apply retrospectively.
9. The lower court record will reflect that the Applicant had applied to be included in these proceedings but failed in his quest as the application was denied; and the trial court ruled that an Order under the *mental Health Act* does not exonerate the subject from his obligations but transfers the management of the subjects obligations to the guardian;
10. The Applicant is guilty of inordinate delay and the orders sought are incapable of being granted as the court decree has been satisfied; the orders sought will amount to closing the stable door after the horse has bolted which renders the application as being frivolous and simply an afterthought;
11. Counsel submitted that court orders cannot be issued in vain; the application lacked merit and prayed that it be disallowed.

Issues For Determination

12. Taking into consideration the above submissions this court has framed the following issues;
 - i. Whether the explanation given for the delay is satisfactory;
 - ii. Costs.

Analysis

13. The relevant provisions of the law are captured under the provisions of Section 79G of the *Civil Procedure Act*; it outlines the time for appeals to be filed from a subordinate court to the High Court; litigants are required to file appeals within a period of thirty (30) days excluding the time which the lower court may certify as being required for the preparation and delivery to the appellant copy of decree or judgment.
14. The Applicant has demonstrated to this court that the final ruling in Githunguri Principal Magistrates Court Civil Case No. 9 of 2015 was delivered on the 2nd March, 2023; on the 10/03/2023 the Applicant



applied for certified copies of the proceedings and judgment; payment was made for the proceedings on 12/09/2023 which were certified and furnished for collection on 26/09/2023 and were collected on 29/09/2023; the certified proceedings and judgment were accompanied with a Certificate of Delay dated 3/10/2023 and it gives the reasons for the delay and the period taken for the preparation of the proceedings and the Judgment;

15. This court is satisfied with the explanation given by the Applicant and that he could not proceed to file the appeal without the proceedings and that the inordinate delay can be attributed to the trial court; the Certificate of Delay certifies the period taken to prepare the proceedings and judgment; this Court has had the benefit of perusing the Certificate of Delay and finds that it was issued by the Principal Magistrate Githunguri and finds that it conforms to the provisions of Section 79(G) and the proviso to Section 2 of the *Civil Procedure Act*.
16. On the issue of the legitimacy of the Order under the *Mental Health Act*, the subjects obligations and the validity of the mandate of the guardian these are issues that can be canvassed at the hearing of the main appeal;

Findings And Determination

17. For the forgoing reasons the application for leave to institute the appeal out of time is found to be meritorious and is hereby granted.
 18. The Applicant is directed to file the Record of Appeal within Forty – Five (45) days from the date hereof.
 19. In default the leave granted shall stand vacated.
 20. The costs of this application shall abide the outcome of the appeal.
- Orders accordingly.

DATED SIGNED AND DELIVERED VIA TEAMS AT KIAMBU THIS 21ST DAY OF MARCH, 2025.

A. MSHILA

JUDGE

In the presence of;

Sanja – Court Assistant

Mwangi Chege – for the Applicant

Wati – for the Respondent

