



**Kimani v Wanjiku & 2 others (Miscellaneous Civil Case  
E178 of 2024) [2025] KEHC 2967 (KLR) (13 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 2967 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT THIKA  
MISCELLANEOUS CIVIL CASE E178 OF 2024**

**FN MUCHEMI, J  
MARCH 13, 2025**

**BETWEEN**

**NELSON MUNORU KIMANI ..... APPLICANT**

**AND**

**WILSON KAMUNYA WANJIKU ..... 1<sup>ST</sup> RESPONDENT**

**AMOS MULI ..... 2<sup>ND</sup> RESPONDENT**

**REGNOL OIL SERVICE STATION RUIRU ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

1. The application dated 4<sup>th</sup> December 2024 seeks for orders of leave to file an appeal out of time against the judgment in Ruiru Small Claims Court SCCC No. E353 of 2024 delivered on 7<sup>th</sup> October 2024.
2. The 1<sup>st</sup> and 3<sup>rd</sup> respondents opposed the application and filed Replying Affidavits dated 31<sup>st</sup> December and 2<sup>nd</sup> December 2024 respectively.

**Applicant’s Case**

3. The applicant states that judgment on liability in Ruiru SCCC No. E353 of 2024 was delivered on 7<sup>th</sup> October 2024 in his favour against the 1<sup>st</sup> third party at the exclusion of the respondent on the grounds that the 1<sup>st</sup> third party did not adduce evidence in court to controvert the averments by the respondent and the 2<sup>nd</sup> third party yet it was not in dispute that the respondent was the registered and beneficial owner of the motor vehicle in question namely KDC 351X.
4. The applicant avers that he began following up on a copy of the judgment through the Judiciary e-system (CTS) as had been directed by the honourable court during the delivery of the judgment so as to appreciate the reasoning of the honourable magistrate and therefore make an informed decision on



whether to lodge an appeal, in vain. Upon several follow ups on the copy of the judgment through the court registry, he was informed that the judgment would be posted on the CTS.

5. The applicant states that the judiciary e-system (CTS) was experiencing technical challenges the week thereafter and thus his advocates could not access the copy of the judgment.
6. The applicant avers that he got a copy of the judgment more than one month past expiry the statutory timelines for lodging an appeal. The applicant further states that he has a good and arguable appeal with a high chance of success.

### **The 1st Respondent's Case**

7. The 1<sup>st</sup> respondent states that the applicant had a counsel who was in conduct of the matter from the filing stage to the day judgment was delivered thus fully aware of the proceedings of the trial court. The 1<sup>st</sup> respondent further states that the applicant's advocates were logged in on the day of judgment as it was held virtually on 7<sup>th</sup> October 2024 and even addressed the court which shows that they knew from the word go what transpired in court.
8. The 1<sup>st</sup> respondent avers that the judgment was uploaded in the online system on 15<sup>th</sup> October 2024, which was only a week's time after its delivery.
9. The 1<sup>st</sup> respondent argues that the applicant has not shown what steps he took either by himself or through his advocates as the period of 30 days had not lapsed when the copy of judgment was uploaded on the Judiciary Electronic Filing system.
10. The 1<sup>st</sup> respondent further argues that the delay is not justified as the applicant has not shown a valid reason for the delay or even tabled evidence to show that he indeed followed up with the registry of the court. The 1<sup>st</sup> respondent states that the applicant has waited for a period of almost 2 months as he filed the instant application about 58 days after the delivery of judgment and about 50 days from when the judgment was uploaded on the judiciary electronic filing system.
11. The 1<sup>st</sup> respondent states that the instant application appears to be an afterthought which the court should not condone or aid the indolent. The 1<sup>st</sup> respondent further states that the applicant does not have an arguable case thus diminishing the likelihood of the appeal succeeding.
12. The 1<sup>st</sup> respondent avers that the trial court correctly determined the issue of liability which was entered at 100% in favour of the applicant herein against the 1<sup>st</sup> third party and the 2<sup>nd</sup> respondent herein. the 1<sup>st</sup> respondent further avers that despite being the owner of the subject motor vehicle, he proved to the court that the 2<sup>nd</sup> respondent was not his driver/agent and thus the issue of vicarious liability as brought by the applicant is not applicable.
13. The 1<sup>st</sup> respondent states that he and his source of livelihood will suffer great prejudice if the court grants the extension of time to the applicant who has chosen not to heed to the importance of complying with time limits.

### **The 3rd Respondent's Case.**

14. The 3<sup>rd</sup> respondent states that the registry staff uploaded the judgment of the trial court on the CTS system on 15<sup>th</sup> October 2024 following a request by his advocates vide letter dated 14<sup>th</sup> October 2024 requesting for a copy of the judgment. Thus, the 3<sup>rd</sup> respondent states that the applicant is lying by claiming that judgment was uploaded on the CTS system more than a month after passing of the statutory time for appeal. The 3<sup>rd</sup> respondent urges the court not to entertain the instant application due to the indolence of the applicant. Furthermore, the 3<sup>rd</sup> respondent states that allowing an appeal



out of time based on a lie under oath will not only be an affront to justice but also promote criminal behavior in courtrooms which are the most sacrosanct places of justice.

15. The 3<sup>rd</sup> respondent states that it will be greatly prejudiced if the court decided to grant the extension of time for the indolent applicant having incurred legal costs to defend the matter at the Small Claims Court which found it not liable but did not grant it costs.
16. Parties put in written submissions.

### **The Applicant's Submissions.**

17. The applicant relies on the case of Marsabit Misc. Application E005 of 2023 Tego v Tego (Miscellaneous Civil Application E005 of 2023) [2024] KEHC 1501 (KLR) (8 February 2024) (Ruling) and submits that the reasons for delay are genuine and were beyond his control and thus he should not be locked out of his right to appeal because of 2 months delay especially when no prejudice has been demonstrated to be suffered by the respondents.
18. The applicant further relies on the case of *Seven L. General Trading Ltd & Another v Karau (Miscellaneous Application 42 of 2024)* [2024] KEHC 3979 (KLR) (24 April 2024) (Ruling) and submits that he has an arguable appeal. The applicant argues that judgment was entered against a 3<sup>rd</sup> party brought into the suit by the respondent together with the 2<sup>nd</sup> third party described as the 1<sup>st</sup> third party's employer. The applicant further argues that the trial court failed to take into account the vicarious liability of the registered owner and of the employer of the 1<sup>st</sup> 3<sup>rd</sup> party thus challenging execution of his judgment which can cause substantial loss and deny him of the fruits of his judgment.

### **The 1st Respondent's Submissions**

19. The 1<sup>st</sup> respondent refers to Section 79G of the *Civil Procedure Act* and the case of Githau v Kagiri & Another (Civil Appeal 314 of 2023) [2024] KEHC 6320 (KLR) (6 June 2024) (Ruling) and Paul Musili Wambua v Attorney General & 2 Others [2015] eKLR submits that the applicant has failed to give sufficient reasons why he did not file his appeal in time having participated in the lower court's proceedings until the date of delivery of judgment on 7<sup>th</sup> October 2024. Further the applicant was represented by his advocates at the lower court and the date of delivery of the judgment was also posted in the judiciary website. The applicant has therefore been indolent by failing to follow up with his advocates even after delivery of judgment. He instead chose to state that the court system was defective, which is not true. Furthermore, the applicant failed to portray what measures he took to ensure that he got hold of the judgment of the trial court in good time. The 1<sup>st</sup> respondent submits that the applicant has been scornful of the equitable principle of equity aids the vigilant and not the indolent and therefore he is not entitled from invoking the court's equitable jurisdiction for the orders sought.
20. The 1<sup>st</sup> respondent further submits that the intended appeal does not raise any pertinent issues of law but only mere facts dealt with by the lower court. The 1<sup>st</sup> respondent submits that the grant of orders sought would inflict undue loss upon him and deprive him of the fruits of justice rendered in the said judgment.

The Law

Whether the court should exercise its discretion to grant the applicant leave to file his appeal out of time;

21. Section 79G of the *Civil Procedure Act* states:-



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 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.

22. It is clear from the wording of section 79G of the *Civil Procedure Act* that before the court considers extension of time, the applicant must satisfy the court that that he has good and sufficient cause for filing the appeal out of time. This principle was enunciated in the case of *Diplack Kenya Limited v William Muthama Kitonyi* [2018]eKLR an applicant seeking enlargement of time to file an appeal or admission of an already filed appeal must show that he has a good cause for doing so.
23. The Supreme Court in the case of *Nicholas Kiptoo Korir arap Salat v IEBC and 7 Others* [2014] eKLR enunciated the principles applicable in an application for leave to appeal out of time. The court stated inter alia that:-

“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.”

24. Similarly in the case of *Paul Musili Wambua v Attorney General & 2 Others* [2015]eKLR, the Court of Appeal in considering an application for extension of time and leave to file the Notice of Appeal out of time stated the following:-

“.....it is now settled by a long line of authorities by this court that the decision of whether or not to extend the time for filing an appeal the Judge exercises unfettered discretion. However, in the exercise of such discretion, the court must act upon reason(s) not based on whim or caprice. In general the matters which a court takes into account in deciding whether or not to grant an extension of time are; the length of delay, the reason for the delay, the chances of the appeal succeeding if the application is granted, the degree of prejudice to the respondent if the application is granted.”

25. It is evident from the record that the judgment of the lower court was delivered on 7<sup>th</sup> October 2024 and the applicant filed the current application on 4<sup>th</sup> December 2024. This is approximately two (2)



- months outside the time limited for filing an appeal. The applicant has attributed his delay by the failure by the court registry to upload the judgment on the judiciary electronic filing system in time.
26. On perusal of the record, the applicant was represented by counsel in the suit Ruiru Small Claims Court SCCC No. E353 of 2024 who defended his interests all throughout the trial. The date of judgment was put up in the judiciary website and thus the applicant was aware of the date of judgment. Notably, he has not denied such fact. The applicant's counsel was present virtually on 7<sup>th</sup> October 2024 when judgment was delivered. That fact has also not being denied. The said judgment was uploaded on the judiciary electronic filing system on 15<sup>th</sup> October 2024. Therefore the applicant deposes that the judgment was uploaded one month after the statutory period for filing an appeal had lapsed. The said judgment was available on the CTS 7 days after it was delivered by the trial court. That notwithstanding, the applicant's advocates had attended court for delivery of judgment. The applicant has further not demonstrated that he took steps to follow up with his advocates after the judgment was delivered. It is evident that the applicant deposed falsehoods in regard to the date of uploading he judgment in the CTS. It was only seven (7) days from the date of delivery that the uploading in the CTS was done.
  27. Evidently, the applicant has not given any tangible reasons as to why he did not file his appeal within the statutory time. Although the delay of two months may not be inordinate, but in the instant matter, the applicant herein has failed to explain the delay to the satisfaction of the court.
  28. I have further perused the draft Memorandum of Appeal and noted the grounds of appeal do not raise arguable points of law. Furthermore, the applicant did not annexed a copy of the judgment to give the court an opportunity to peruse it. The judgment on liability was 100% in favour of the plaintiff. Thus, without delving into the merits of the appeal, the intended appeal does not have high chances of success in my view.
  29. Accordingly, I find that the applicant has not established to the satisfaction of the court that time should be enlarged to enable him file his appeal.
  30. Accordingly, the application dated 4<sup>th</sup> December 2024 lacks merit and is hereby dismissed with costs to the 1<sup>st</sup> and 3<sup>rd</sup> respondents.
  31. It is hereby so ordered.

**RULING DELIVERD VIRTUALLY, DATED AND SIGNED AT THIKA THIS 13TH DAY OF MARCH 2025.**

F. MUCHEMI

**JUDGE**

