



REPUBLIC OF KENYA



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**Ngugi v Waweru & another (Civil Appeal E186 of 2024)
[2025] KEHC 3102 (KLR) (6 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 3102 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT THIKA
CIVIL APPEAL E186 OF 2024
FN MUCHEMI, J
MARCH 6, 2025**

BETWEEN

JOHN NJUGUNA NGUGI APPLICANT

AND

VERONICA MUGESHI WAWERU 1ST RESPONDENT

FRANCIS NDIRANGU NDEGWA 2ND RESPONDENT

*(Appeal against the judgment in Thika Small Claims Court
SCCC No. E1464 of 2023 delivered on 5th June 2024.)*

RULING

Brief facts

1. The application dated 29th July 2024 seeks for orders of leave to file an appeal out of time against the judgment in Thika Small Claims Court SCCC No. E1464 of 2023 delivered on 5th June 2024.
2. The 1st respondent opposed the application and filed a Replying Affidavit dated 25th November 2024.

Applicant's Case

3. The applicant states that judgment in Thika SCCC No. E1464 of 2023 was delivered on 5th June 2024 where the trial court found in favour of the 1st respondent. Being aggrieved with the said judgment, the applicant is desirous of filing an appeal but the statutory period allowed for filing the appeal has already lapsed.
4. The applicant states that he acted in person in the trial court because of his limited source of income. The applicant further states that initially he did not fully comprehend the full impact of the judgment and sought the services of Kaka Kamau & Co. Advocates.



5. The applicant states that he has an arguable intended appeal with high chances of success and the same ought to be heard on merit. The applicant further states that no party will be prejudiced by the current application as all the parties will get an opportunity to be heard on appeal.

The 1st Respondent's Case

6. The 1st respondent states that the application is an afterthought, an abuse and misuse of the judicial process. The 1st respondent argues that the applicant has not given any good or sufficient cause for the delay in filing the appeal within the time provided under Section 79G of the *Civil Procedure Act*. Further, the 1st respondent argues that the allegation by the applicant that he was acting in person and that is why he did not file an appeal on time is unreasonable, inexcusable and inordinate as ignorance of the law is not a defence.
7. The 1st respondent argues that the application is only meant to prevent or delay her from enjoying the fruits of her judgment. The 1st respondent states that she shall suffer great prejudice if the orders are granted.
8. Directions were issued that the application be canvassed by way of written submissions and from the record only the 1st respondent complied by filing her submissions on 11th January 2025.

The 1st Respondent's Submissions

9. The 1st respondent relies on Section 79G of the *Civil Procedure Act* and the cases of Nicholas Kiptoo arap Korir Salat vs Independent Electoral & Boundaries Commission & 7 Others [2013] eKLR and Paul Musili Wambua vs Attorney General & 2 Others (2015) eKLR and submits extension of time is an equitable remedy reserved for a deserving applicant as the applicant is required to give good and sufficient cause for not filing the appeal in time. The 1st respondent argues that the applicant has not given sufficient reasons for the delay as the applicant has argued that the delay in filing the appeal is due to self-representation stating that he was not aware of the strict timelines for filing the appeal. The 1st respondent further argues that the applicant's claim of self-representation does not absolve him from the responsibility to adhere to procedural timelines. The law requires all parties, regardless of their legal knowledge or representation, to comply with the established procedures. To support her contentions, the 1st respondent relies on the cases of Gisaga vs Kiruja [2023] KEELC 21896 (KLR) and Nicholas Kiptoo arap Korir Salat vs IEBC & Others [2013] eKLR.
10. The 1st respondent submits that the impugned judgment was entered on 5th June 2024 and the applicant filed the instant application on 30th July 2024, resulting in a delay of 25 days. The 1st respondent submits that that delay exceeds the statutory period by a significant margin and the applicant has not provided an adequate or reasonable justification for the extended delay.
11. The 1st respondent submits that from the intended Memorandum of Appeal and the judgment of the trial court, it is clear that the appeal does not raise pertinent issues of law. The 1st respondent further submits that allowing the instant application would cause undue prejudice to her and she has a legitimate expectation that judicial timelines will be respected.

The Law

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

12. 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.

13. 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 vs 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.

14. The Supreme Court in the case of *Nicholas Kiptoo Korir arap Salat vs 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.

15. Similarly in the case of *Paul Musili Wambua vs 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.”

16. It is clear on the record that the judgment herein was delivered on 5th June 2024 and the applicant filed the current application on 30th July 2024. This is approximately twenty-five (25) days outside the time limited for filing an appeal. It is therefore my considered view that a period of 25 days is not inordinate and is excusable. The applicant has attributed his delay on the challenges of acting in person as he



had no financial resources. I have perused the trial court record and noted that the applicant acted in person in the lower court. And that he only engaged an advocate in this application. I have perused the grounds supporting this application and noted that the reasons for the delay are well explained and are excusable in my view.

17. I have also perused the draft Memorandum of Appeal and noted the grounds of appeal raises arguable points of law. Thus, without delving into the merits of the appeal, the intended appeal has chances of success. Accordingly, I find that the applicant has established to the satisfaction of the court that time ought to be extended to enable him file his appeal.

Conclusion

18. I thereby opine that the application dated 29th July 2024 has merit and is hereby allowed.
19. The applicant shall file his appeal within 14 days and serve the memorandum of appeal on the respondents forthwith.
20. It is hereby so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT THIKA THIS 6TH DAY OF MARCH 2025.

F. MUCHEMI

JUDGE

