



REPUBLIC OF KENYA



**KENYA LAW**  
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**Okombo v Wambui (Civil Miscellaneous E282 of 2025)  
[2025] KEHC 6119 (KLR) (Civ) (8 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 6119 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CIVIL**

**CIVIL MISCELLANEOUS E282 OF 2025**

**TW CHERERE, J**

**APRIL 8, 2025**

**BETWEEN**

**STEPHEN ADONGO OKOMBO ..... APPLICANT**

**AND**

**IRENE NJOKI WAMBUI ..... RESPONDENT**

**RULING**

1. The Applicant's suit Milimani SCCC E4908 OF 2024 was struck out on 19<sup>th</sup> December 2024 and a subsequent suit Milimani SCCC E124 of 2025 was equally struck out on 28<sup>th</sup> February 2025.
2. The striking out of the suit prompted the Applicant to file the Notice of Motion dated 03<sup>rd</sup> March 2025, brought under Sections 1A, 1B 3B and 79 of the [Civil Procedure Act](#), the Applicant seeking the following orders:
  1. Leave to appeal the judgment delivered on 19<sup>th</sup> December 2024 in Milimani SCCOMM E4908 of 2024
  2. Costs be provided for
3. The Motion is supported by an affidavit sworn by the Applicant on 03<sup>rd</sup> March 2025 and on the following grounds:
  1. The Applicant is aggrieved by the judgment and intends to appeal;
  2. The intended appeal is arguable with high chances of success;
4. The application is opposed by way of grounds of opposition dated 12<sup>th</sup> March 2025 on the following grounds:



1. 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.
2. That the application is an afterthought, an abuse and misuse of the judicial process.
3. That the Respondent shall suffer great prejudice if an extension of filing of the appeal is granted or the application is allowed.
4. That the appeal is mischievous, contemptuous and an abuse of and misuse of the judicial process.
5. That the Applicant's application and prayers sought lack merit, are flawed, untenable, misconceived and it is in the interests of justice that his Application be dismissed with costs to the Respondent.

### **Issues for Determination**

5. I have considered the application in light of the supporting affidavit and the grounds of opposition and the issues for determination are:
  1. Whether the Applicant has sufficiently explained the delay in filing the application;
  2. Whether leave to appeal should be granted.

### **Analysis and Determination**

6. Courts have discretion under Section 95 of the Civil Procedure Act and Order 50 Rule 6 to enlarge time, and a party seeking such indulgence must offer a reasonable and satisfactory explanation. In *Nicholas Kiptoo Arap Korir Salat v IEBC & 7 others* [2014] eKLR, the Supreme Court held that extension of time is not a right but an equitable remedy that is only available to a deserving party at the discretion of the court.
7. It is not in dispute that the judgment was delivered on 19<sup>th</sup> December 2024, and the application was filed on 03<sup>rd</sup> March 2025, nearly three months later. The Applicant's explanation that the delay was occasioned by the filing of another suit which was subsequently struck out on 28<sup>th</sup> February 2025 is reasonable and has not been controverted.
8. Although the Respondent contends that she will suffer loss if the orders sought are granted, no evidence in support thereof was tendered. There is equally no evidence that by seeking the court's discretion, the Applicant is abusing the court process.
8. The right to appeal is a constitutional right under Article 50(1) of the Constitution, and where no significant prejudice is shown to be occasioned by the delay, courts have leaned in favor of allowing parties to ventilate their grievances on appeal.
8. In light of the foregoing, I make the following orders:
  1. Leave to file an appeal against the judgment delivered on 19<sup>th</sup> December 2024 in MILIMANI SCCC E4908 OF 2024 is granted, limited to 14 days from the date of this ruling.
  2. Costs of this application shall abide by the outcome of the appeal.

**DELIVERED AT NAIROBI THIS 08<sup>th</sup> DAY OF April 2025**

**WAMAE.T. W. CHERERE**



## **JUDGE**

Appearances

Court Assistant - Ms. Ubah

For Applicant - Ms. Maina for Agnes Wanjiku Maina & Co. Advocates

For Respondent - Ms. Abok for Gitau & Kaburu Advocates LLP

