



**Achieng aka Ataka & another v Mkunzo & another (Suing as the Administrator of the Estate of Joel Azimio Karani - Deceased) (Miscellaneous Application 103 of 2023) [2025] KEHC 5822 (KLR) (9 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 5822 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MALINDI  
MISCELLANEOUS APPLICATION 103 OF 2023**

**M THANDE, J**

**MAY 9, 2025**

**BETWEEN**

**ROSE ACHIENG OWANO AKA ROSE ACHIENG ATAKA ..... 1<sup>ST</sup> APPLICANT**

**PHILIP OTIENO ..... 2<sup>ND</sup> APPLICANT**

**AND**

**VICTORY KARANI MKUNZO ..... 1<sup>ST</sup> RESPONDENT**

**GLADYS KADZO KALAMA ..... 2<sup>ND</sup> RESPONDENT**

**SUING AS THE ADMINISTRATOR OF THE ESTATE OF JOEL AZIMIO  
KARANI - DECEASED**

**RULING**

1. Before me for determination is an Application dated 9.8.23. The Applicants are pro se litigants, and as is often the case, the pleadings drawn are usually difficult to comprehend. Doing the best I can however, I can decipher that they seek leave to file appeal out of time against the judgment in Malindi CMCC No. E150 of 2021. They also seek stay of execution thereof.
2. The Applicants' case is that the judgment was entered on 7.7.23 and the mandatory period for filing appeal has lapsed. They claim that they were not allowed to air their views at the hearing and that judgment was entered without notice to them. They are apprehensive that the Respondents will commence execution proceedings against them and urge that the orders sought be allowed so that they can file appeal which raises issues and has high chances of success.
3. The Respondents though served did not file a response or participate in the matter.



4. The statutory period for filing an appeal in this Court from a subordinate Court is 30 days. This is stipulated in Section 79G of the [Civil Procedure Act](#) which provides:

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 to the appellant 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.

5. The proviso to Section 79G of the [Act](#) allows a party who gets caught up and is unable to file an appeal within the stipulated period, to seek extension of time. Such party must however satisfy the Court that there is good and sufficient reason for not filing the appeal on time.
6. An order for extension of the time to file an appeal is discretionary. It is an equitable remedy and not a right of a party. (See [Nicholas Kiptoo Arap Korir Salat v Independent Electoral and Boundaries Commission & 7 others](#) [2014] eKLR).
7. On the principles that a court should consider in exercise of its discretion in an application for extension of time, the Court of Appeal in [Omar Shurie v Marian Rashe Yafar](#) [2020] eKLR, stated:

“[B]ut this Court has over the years devised appropriate principles to be applied in achieving a ‘just’ decision in the circumstances of each case. The case of *Leo Sila Mutiso v Hellen Wangari Mwangi* [1999] 2 EA 231 is the locus classicus which laid down the parameters as follows:

“It is now well settled that the decision whether or not to extend the time for appealing is essentially discretionary. It is also well settled that in general the matters which this Court takes into account in deciding whether to grant an extension of time are: first the length of the delay, secondly, the reason for the delay; thirdly (possibly) the chances of the appeal succeeding if the application is granted; and, fourthly, the degree of prejudice to the respondent if the application is granted.”

8. The impugned decision was made on 7.7.23. By dint of Section 79G of the [Civil Procedure Act](#), the appeal ought to have been filed by 7.8.23. The Application was filed on 5.9.23 a delay of just under 1 month.
9. Applying the principles set out in the [Omar Shurie case](#) (*supra*), the Court finds that while there was some delay in filing the Application and draft memorandum of appeal, the same is not inordinate. Further the reason for delay is in my view reasonable. From the draft memorandum of appeal, the Applicants raise triable issues including the fact that the accident involved 3 vehicles which were not included in the suit and that the Applicants were wrongly sued. Lastly, the Applicants are likely to suffer prejudice if the orders sought are not granted and the Respondent proceeds to execution.
10. Accordingly, the Application dated 9.8.23 is allowed on the following terms:
  - a. Leave is hereby granted to the Applicant to file appeal out of time on terms that the memorandum and record of appeal shall be filed by 30.5.25.
  - b. The Applicants shall deposit the decretal sum in court by 30.5.25.



- c. In default of orders a) and b), the leave and stay so granted shall automatically lapse.
- d. The Respondent shall have costs.

**DATED, SIGNED AND DELIVERED IN MALINDI THIS 9<sup>TH</sup> DAY OF MAY 2025**

**M. THANDE**

**JUDGE**

