



**Progressive Credit Limited v Self (Civil Appeal E038 of 2024)  
[2025] KEHC 6878 (KLR) (22 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 6878 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NANYUKI  
CIVIL APPEAL E038 OF 2024  
AK NDUNG’U, J  
MAY 22, 2025**

**BETWEEN**

**PROGRESSIVE CREDIT LIMITED ..... APPLICANT**

**AND**

**RAJAB OKOTH SELF ..... RESPONDENT**

**RULING**

1. Progressive credit limited (hereinafter, the Applicant), moved this court vide the Notice of Motion dated 17/10/2024 brought under Article 50 and 159 (2)(d) of the *Constitution*, Section 1A, 1B, 3A, 79G and 95 of the *Civil Procedure Act* and Order 51 of the *Civil Procedure Rules* for orders that leave be granted to appeal out of time against the judgment delivered by Honourable Lisper Gakii Nyaga dated 22/07/2024 in SCCCOMM/E106/2024 *Progressive Credit Limited v Rajab Okoth Self*, that the annexed memorandum of appeal be deemed as duly filed and costs be provided for.
2. The judgment sought to be appealed was delivered on 22/07/2024. The judgment having been passed on 22/07/2024, appeal ought to have been lodged on or before 22/08/2024 according to Section 79G of the *Civil Procedure Act*, Cap 21 which states that;  

“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.”
3. The present application for leave to appeal out of time was filed on 21/11/2024; therefore, the delay that we are dealing with here is about three (3) months. Under the proviso to Section 79G aforesaid,



this court may admit an appeal out of time if the appellant satisfies the court that he had good and sufficient cause for not filing the appeal in time.

4. The reasons for the delay in lodging this appeal are set out on the face of the application and more particularly in the supporting affidavit annexed to the application sworn by Cynthia Korir, the advocate in conduct of the matter.
5. She deposed that upon the delivery of the judgment, the court informed the parties that the judgment will be available and would be shared through email but it was not shared and the Applicant was also unable to peruse the copy of the judgment on the e-filing system prompting the Applicant to write several reminders and make telephone calls to the court registry. That the Applicant wishes to appeal and the intended appeal raises triable and arguable issues hence the court should invoke the overriding objectives under Section 1A, 1B, 3 and 3A of the *Civil Procedure Act* and Article 50 and 159 of the *Constitution*. That the balance of convenience tilts in its favour since the Applicant has an overwhelming chance of success and the amount of money owed by the Respondent is substantial. That the delay in filing the appeal is not inexcusable or inordinate hence no prejudice will be occasioned to the parties if the application is allowed. That the delay is not intentional and not designed to waste court's time and Article 50 of the Constitution guarantees right to be heard and access to justice.
6. The application is not opposed despite the fact that the Respondent was served as evidenced by affidavit of service dated 14/01/2025.
7. I have considered the application by the Applicant. It is now well settled that the decision whether or not to extend the time for appealing is essentially discretionary. The Court of Appeal in *Thuita Mwangi v Kenya Airways Ltd* [2003] eKLR while relying on the case of *Leo Sila Mutiso v Rose Hellen Wangari Mwangi*, (Civil Application No Nai 255 of 1997) (unreported); stated that;

“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 conditions that were set by the Supreme Court in *Nicholas Kiptoo Arap Korir Salat v. The Independence Election & Boundaries Commission & 7 Others*, [2014] eKLR illuminate the matter further. The court held that a court exercising its discretion to extend time has to consider the following factors;
  - a. . Extension of time is not a right of a 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 to 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 respondents if the extension is granted;
  - f. Whether the application has been brought without undue delay; and



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9. To enable this court to exercise its discretion in favour of the Applicant, the Applicant had the duty to satisfy the court that he had good and sufficient cause for not filing the appeal in time. The reason advanced by the Applicant is that counsel was not able to extract the lower court judgment on time as the same was not shared to their email as the court had promised and they could not access the judgment on the e-filing system. Notably, the Applicant did not state when the judgment was made available to them. Further, the letter attached requesting for a copy of the judgment is dated 25/07/2024 which means they wrote to the court few days after delivery of the judgment. No other letter is attached to show that they made several reminders to the court as alleged in the supporting affidavit.
10. The facts laid out by the applicant are not controverted as there was no response to the application. On the material before me, am satisfied that a basis has been laid to warrant exercise of discretion in favour of the applicant.
11. Accordingly, the Notice of Motion dated 17/10/2024 is allowed and I make the following orders;
  1. Leave be and is hereby granted to appeal out of time against the judgment delivered by Honourable Lisper Gakii Nyaga dated 22/07/2024 in SCCCOMM/E106/2024 *Progressive Credit Limited v Rajab Okoth Self*.
  2. The annexed memorandum of appeal be deemed as duly filed.
  3. The record of appeal be filed and served within 60 days hereof.
  4. Each party to bear their own costs.
  5. Mention on 15.7.24 for directions.

**DATED SIGNED AND DELIVERED VIRTUALLY THIS 22<sup>ND</sup> DAY OF MAY, 2025.**

**A.K. NDUNG’U**

**JUDGE**

