



**Mayore v Ombwori (Miscellaneous Civil Application
E001 of 2025) [2025] KEHC 8822 (KLR) (19 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 8822 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYAMIRA
MISCELLANEOUS CIVIL APPLICATION E001 OF 2025**

**WA OKWANY, J
JUNE 19, 2025**

BETWEEN

STANLEY KEBIBA MAYORE APPLICANT

AND

SARAH OMBWORI RESPONDENT

RULING

1. The Applicant in the Application dated 14th January 2025 seeks leave to file an appeal out of time. The Application is premised on the grounds on the face of the application and is supported by the Applicant's affidavit wherein he avers that the failure to file the appeal within the stipulated timelines was occasioned by mistake on the part of his advocates, which mistake should not stop him from pursuing the appeal. He also states that his intended appeal raises salient issues of facts and law and has overwhelming chances of success.
2. The Respondent opposed the Application through the Relying Affidavit dated 7th February 2025 sworn by the Defendant's Insurance Company's Legal Officer who avers that the reasons advanced, by the Applicant for the delay, are not plausible and that the delay in filing the application was inordinate.
3. The Application was canvassed by way of written submissions which I have considered.
4. The main issue for my determination is whether the Application is merited.

Analysis and Determination

5. Section 79G of the *Civil Procedure Act* provides as follows on leave to appeal out of time: -

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 a good and sufficient cause for not filing the appeal in time.

6. In *Mombasa County Government v Kenya Ferry Services & another* (2019) eKLR, the Supreme Court pronounced itself on the principles governing applications for extension of time as follows: -

“(25) Concerning extension of time, this Court has already set the guiding principles in the Nick Salat Case as follows:

“... it is clear that the discretion to extend time is indeed unfettered. It is incumbent upon the applicant to explain the reasons for delay in making the application for extension and whether there are any extenuating circumstances that can enable the Court to exercise its discretion in favour of the applicant.”

... we derive the following as the underlying principles that a Court should consider in exercising such discretion:

1. 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;
2. A party who seeks extension of time has the burden of laying a basis, to the satisfaction of the Court;
3. Whether the Court should exercise the discretion to extend time, is a consideration to be made on a case- to- case basis;
4. Where there is a reasonable [cause] for the delay, [the same should be expressed] to the satisfaction of the Court;
5. Whether there will be any prejudice suffered by the respondents, if extension is granted;
6. Whether the application has been brought without undue delay; and
7. Whether in certain cases, like election petitions, public interest should be a consideration for extending time.”

7. The Applicant’s reasons for failing to file an appeal on time are that his legal counsel did not appraise him on the outcome of the judgment delivered by the trial court on 6th November 2024 on time and that he only got to find out about it on 13th January 2025 after he visited the said advocate’s offices. He also contends that he is aggrieved by the award of the trial court as it is inordinately low in light to the injuries that he sustained in the accident.



8. On their part, Counsel for the Respondent submitted that the reasons furnished by the Applicant for the delay are insufficient and do not warrant the Court's exercise its discretion in his favour. It was also submitted that the delay is inordinate.

9. I have considered the reasons advanced by the Applicant against the principles in the case of Edney Adaka Ismail v Equity Bank Limited [2014] eKLR, where the court declined to exercise its discretion and stated: -

“It is true that where the justice of the case mandates, mistake of advocate even if they are blunders, should not be visited on the clients when the situation can be remedied by costHowever, it is not in every case that a mistake committed by an advocate would be a ground for setting aside orders of the court.”

10. In the instant case, I note that the Applicant was the successful party before the trial court but he still maintains that the lower court award was too low. The Applicant's legal counsel did not explain why they did not inform the Applicant of the outcome of his case until he showed up at their offices. I find that even though the inaction, on the part of the Applicant's Counsel is inexcusable, the same should not be visited on their client. I find guidance on the case of Dilpack Kenya Limited v William Muthama Kitonyi [2018] eKLR where Odunga J. (as he then was) held that: -

“33. In this case the applicant has not expounded on the nature and quality of the inadvertence alluded to. This seems to be a case of mere inaction and as was held in Berber Alibhai Mawji v Sultan Hasham Lalji & 2 others [1990-1994] EA 337, inaction on the part of an advocate as opposed to error of judgement or a slip is not excusable. Therefore, pure and simple inaction by counsel or a refusal to act cannot amount to a mistake, which ought not to be visited on the client.”

11. I find that the explanation given by the Applicant is plausible. I have also considered the period that has lapsed from the date of judgment and it is my finding that the delay in filing the instant application was not inordinate. I have also considered the rights of the Applicant to appeal as against the prejudice that the Respondent is likely to suffer and I find that it will not serve the interest of justice to keep the applicant away from the seat of justice by locking out his appeal. I am guided by the decision in Kamlesh Mansukhalal Damki Pattni v Director of Public Prosecution & 3 others [2015] eKLR, where the Court of Appeal held that: -

“It must be realized that courts exist for the purpose of dispensing justice.

For these reasons, decisions of the courts must be redolent of fairness and reflect the best interests of the people whom the law is intended to serve In all these decisions, it is incumbent upon the court in exercising its judicial authority to ensure dispensation of justice as this is what lives up to the constitutional expectation and enhances public confidence in the system of justice....

It suffices to comment that a court of law should be hesitant at closing the door to the corridors of justice prior to a litigant being heard on his complaint.....”



12. For the reasons stated in this ruling, I find that the instant Application is merited and I therefore allow it in the following terms: -

- a. The Memorandum of Appeal dated 14th January 2025 shall be deemed to be properly filed out time by leave of the Court, upon payment if the requisite court filing fees.
- b. The costs of this Application shall abide the outcome of the appeal.

13. It is so ordered.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT NYAMIRA VIA MICROSOFT TEAMS THIS 19TH DAY OF JUNE 2025.

W. A. OKWANY

JUDGE

