



**Muriro t/a Mucharage Auto Hardware v Board of Management
Kianderi Girls Secondary School (Miscellaneous Civil Application
E039 of 2024) [2025] KEHC 8137 (KLR) (11 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 8137 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MURANG'A
MISCELLANEOUS CIVIL APPLICATION E039 OF 2024**

CW GITHUA, J

JUNE 11, 2025

BETWEEN

**GEORGE GITHINJI MURIRO T/A MUCHARAGE AUTO
HARDWARE APPLICANT**

AND

**BOARD OF MANAGEMENT KIANDERI GIRLS SECONDARY
SCHOOL RESPONDENT**

RULING

1. The applicant, George Githinji Muriro t/a Mucharage Auto Hardware, approached this court vide a Notice of Motion dated 18th April 2024 seeking leave of this court to file his intended appeal out of time.
2. The application is anchored on the grounds stated on its face which are replicated in the depositions made by the applicant in his supporting affidavit sworn on 18th April 2024. Briefly, the applicant contends that upon delivery of the trial court's judgement on 29th February 2024, he instructed his advocate on record to file an appeal against the whole judgement; that his advocate proceeded to request for certified copies of the trial courts proceedings and judgement on 8th March 2024; that unfortunately, his advocate passed on in the month of March 2024 and his office had difficulties filing the appeal in good time as the office had to be closed in preparation for the departed Advocate's interment.
3. It is the applicant's case that the delay in filing his intended appeal was not intentional as it was occasioned by the predicament surrounding the demise of his learned counsel and failure by the trial court to supply him with certified typed copies of its proceedings and judgement. The applicant further asserted that he filed the application without inordinate delay and that as his intended appeal had high chances of success, the court should exercise its discretion and allow the application as doing so will not occasion the respondent any prejudice.



4. The application was contested by the respondent through grounds of opposition filed on its behalf by learned Principal State Counsel Ms. Mary Chege on 26th July, 2024. A reading of the grounds of opposition filed on behalf of the respondent reveals that they bear no relevance to the current application as they entirely address the merits of the applicants intended appeal. I say so because in the grounds of opposition, the respondent claimed in a nutshell that the applicant had failed to prove his case in the lower court to the required legal standard and that the trial court's decision was correct and should not be disturbed.
5. The application was canvassed by way of written submissions. The applicant's submissions were filed on his behalf by the firm of C.W. Waititu & Co. Advocates on 16th December 2024 while those of the respondent were filed on 3rd April 2025 by Ms. Mary Chege, learned Principal State Counsel on behalf of the Attorney-General's Office.
6. In their submissions, the parties re-iterated the positions they had taken in support and in opposition to the application save that in its submissions, besides attacking the merits of the applicant's intended appeal, the respondent relied on the Supreme Court's decision in Nicholas Kiptoo Korir Arap Salat V IEBC and 7 Others [2014] eKLR which enumerates the principles which ought to guide courts in determining applications such as the one before this court and submitted that the applicant was undeserving of the court's discretion in his favour as the intended appeal was not merited and was solely aimed at delaying execution; that the application was misconceived and vexatious and amounted to an abuse of the court process.
7. Having duly considered the application together with the parties' rival written submissions, I find that the main issue for my determination is whether the applicant had demonstrated sufficient cause to warrant grant of his prayer for extension of time to file his intended appeal out of time.
8. The law governing filing of appeals to the High Court is stipulated in Section 79 G of the [Civil Procedure Act](#) (CPA) which states as follows;

“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.”
9. From the above provision, it is clear that this court has wide and unfettered discretion to extend time for filing an appeal after expiry of the thirty days period prescribed under Section 79 G above if the applicant established good and sufficient reasons for failure to file the intended appeal within the time limited by the law.
10. The Court of Appeal in *Thuita Mwangi V Kenya Airways Limited* (2003) eKLR elucidated the factors courts should consider when deciding on applications of this nature. The court expressed itself 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.”

11. The Supreme Court in *Nicholas Kiptoo Korir Arap Salat V IEBC and 7 Others* [Supra] emphasized that extension of time was not a right of any party and that it was an equitable remedy which was only available to a deserving party. The court also underscored the need for the court to consider when determining such application whether if the application was allowed, the respondent would suffer prejudice and whether the application had been filed without undue delay.
12. In this case, it is not disputed that the judgement sought to be challenged on appeal was delivered on 29th February 2024. This means that the statutory period within which the applicant ought to have filed his intended appeal expired on or about 4th April 2024. The applicants filed the instant application on 18th April 2024, about fourteen (14) days later.
13. When explaining his failure to file his intended appeal within time, the applicant stated that the delay was caused by circumstances beyond his control as it was occasioned by the trial court’s failure to supply his advocates with copies of its proceedings and judgement on time and secondly, by the demise of his advocate, Mr. Mwaniki which necessitated closure of the advocates law firm at the time when his appeal ought to have been prepared and filed.
14. I have considered the reasons advanced by the applicant in support of his application and in my view, the same are well founded. The applicant has annexed a receipt to his supporting affidavit to prove that his advocates indeed requested to be furnished with the trial court’s proceedings and judgement on 8th March 2014. And though the applicant has not availed any evidence to prove his claim that his advocate passed on in the same month of March 2024, this fact is not disputed by the respondent. Having been a judge in this station at the time in question, I am also aware of the demise of the late learned counsel Mr. Mwaniki around the time indicated by the applicant.
15. Given the foregoing, I am satisfied that the applicants delay of less than a month in filing his intended appeal was not inordinate and has in any event been sufficiently explained. Since the applicant is aggrieved by the trial court’s decision, given the circumstances which necessitated his application as shown above, it is only fair and just that he be allowed to ventilate his grievances on appeal as denying him that opportunity may amount to a violation of his constitutional right of access to justice which includes the right to access appellate courts.
16. Besides, the respondent has not shown what prejudice it would suffer if the application was allowed. Whether or not the intended appeal was merited is an issue that cannot be canvassed in the context of this application. It is a substantive issue which ought to be ventilated in the appeal if it is filed. On my part, I have perused the grounds advanced in the annexed draft Memorandum of Appeal and am satisfied that the intended appeal is arguable.
17. For all the foregoing reasons, it is my finding that the applicant has demonstrated that he was deserving of exercise of this court’s discretion in his favour. In the premises, I allow the application on terms that the applicant shall file and serve his intended appeal within the next 14 days.
18. Regarding costs, it is trite that costs follow the event and are at the discretion of the court. In this case, given that the delay in filing the intended appeal on time was caused by circumstances beyond the applicant’s control, the order that best commends itself to me on costs is that each party shall bear its own costs of the application.
19. It is so ordered

DATED, SIGNED AND DELIVERED AT MURANG’A THIS 11TH DAY OF JUNE 2025



HON. C. W. GITHUA

JUDGE

In the Presence of

Ms Waititu for the applicant

Ms Chege for the Respondent

Ms. Susan Waiganjo, Court Assistant

