



**Anyona v Safaricom Plc & another (Miscellaneous Civil Application  
E1038 of 2024) [2025] KEHC 10611 (KLR) (Civ) (22 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 10611 (KLR)

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

**CIVIL**

**MISCELLANEOUS CIVIL APPLICATION E1038 OF 2024**

**NW SIFUNA, J**

**JULY 22, 2025**

**BETWEEN**

**SANDRA KERUBO ANYONA ..... APPLICANT**

**AND**

**SAFARICOM PLC ..... 1<sup>ST</sup> RESPONDENT**

**ITEL MOBILE ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. By this Application, the Applicant is seeking leave to Appeal out of time. She is also seeking an order that the Draft Memorandum of Appeal that she has annexed to this Application, be deemed as properly filed.
2. The Application which is dated 20<sup>th</sup> November 2024, has stated that it is brought pursuant to Article 159 of the Kenya *Constitution* Section 3, 3A 79 G and 95 of the *Civil Procedure Act* Cap 21 Laws of Kenya as well as Order 50 Rule 6 of the *Civil Procedure Rules*.
3. It is based on the ground that while the Judgment she intends to Appeal against was delivered on 24<sup>th</sup> November 2023 in Nairobi CMCC No.8116 of 2019 she did not file the Appeal within the stipulated 30 days (from the date of Judgment).
4. The reason she has given for failing to appeal within the stipulated time, is that she had initially elected to pursue review instead of Appeal. She filed her review Application under Order 45 of the *Civil Procedure Rules*.
5. The review which was dated 10<sup>th</sup> June 2024 was eventually dismissed by the trial court on 5<sup>th</sup> November 2024. It is after losing her Application for review that she now resorted for appeal, and now seeks leave to appeal out of time.



## Analysis and Determination

6. I have considered the grounds of the Application, the two prayers aforesaid, as well as the Affidavit sworn by the Applicant in support of the Application.
7. The Application was argued orally by the Applicant, on the lines in the grounds stated in the Application, and in her Supporting Affidavit. In reply, the Respondents argued their opposition to the Application along the lines in their filed Grounds of Opposition.
8. I have in determining this Application carefully distilled the Application (and its said Supporting Affidavit), the response(s) to it, the parties' rival oral submissions, as well as the relevant legal provisions.
9. The Application coming on 20<sup>th</sup> November 2025 against a decision delivered on 24<sup>th</sup> November 2023, was the delay long? Was the delay unreasonable? This being a delay of more than one year, my answer is that it is an unreasonable delay. Delay of almost 13months, is inordinate delay, and which to be excused has to be explained and justified.
10. The Appeal having been filed after a lapse of almost thirteen months instead of the 30 days pursuant in Section 79G of the *Civil Procedure Rules*, was filed way outside that stipulated period. Hence there was such a loudly prolonged delay of more than a year (Cap 21 Laws of Kenya).
11. Section 79G of the *Civil Procedure Act* provides that an Appeal from subordinate courts to the High Court shall be filed within 30 days from the date of the decision being appealed. The same section in the proviso provides 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.
12. For the Court to enlarge the time for filing, or allow for filing out of time, a good and sufficient cause has to be shown. I have considered the reasons given by the Applicant for her delay of almost thirteen months. I need to point out that, that cannot even by a corruption of grammar or logic, be described as a delay. This is because as from the start there was no intention to appeal. The Applicant had from the onset preferred and elected review and not an Appeal. She only changed course after her review Application was dismissed by the trial court.
13. Choices have consequences, and a party that has elected some course of action or procedure signs for the logical legal consequence of that choice. That consequence in the circumstances of this case, was the trial court's dismissal of the said review Application. Having chosen the route of review instead of that of Appeal, the horse already bolted from the stable.
14. That is spilt milk and the Applicant should not now invite this Court to mourn with her. After all she was at the time and throughout till now been represented by legal counsel. An advocate being a specialist in the law, his advice and decision should bind the client. A litigant should not on the basis of legal counsel take a particular course, and later turn around to claim or feign ignorance.
15. Allowing this to happen as attempted by the Applicant in this Application, is not only tantamount to her ousting a Decree-Holder from the seat of justice, but shall be taking away a Decree-holder's legitimate expectation and also denying it the fruits of its judgment. Justice is a double-edged sword that cuts both ways and that acts on both parties. Justice for the Judgment-Debtor should not be injustice to the Decree-Holder.
16. For those reasons, the Applicant's plea for enlargement of time for Appeal, fails and is hereby declined accordingly. The upshot of this, is that this Application is for dismissal, and is hereby dismissed with costs.



DATED AND DELIVERED AT NAIROBI ON THIS 22<sup>ND</sup> DAY OF JULY 2025.

PROF (DR) NIXON SIFUNA

JUDGE

