



REPUBLIC OF KENYA



KENYA LAW
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**Gachomba v Gachomba & another (Civil Appeal E224 of 2024)
[2025] KEHC 11130 (KLR) (28 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 11130 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
CIVIL APPEAL E224 OF 2024
PN GICHOHI, J
JULY 28, 2025**

BETWEEN

CATHERINE W GACHOMBA APPELLANT

AND

JACINTA WANJIRU GACHOMBA 1ST RESPONDENT

MARTIN MUREITHI 2ND RESPONDENT

RULING

1. The Appellant/ Applicant's Notice of Motion dated 15th October , 2024, brought under Sections 3A and Section 79 G of the [Civil Procedure Act](#) seeks for Order that :-
 1. This Honourable Court be pleased to grant the Applicant leave to appeal out of time against judgment of Hon. Prisca Wamucii Nyota in Nakuru CMCC No. E217 of 2020.
 2. The costs be in the cause.
2. The application is premised on the grounds on the face of the Motion and supported by the Applicant's Affidavit sworn on 15th October 2024. She sTates that her Advocates on record erroneously placed this file with closed files and were able to trace it on 17th October 2024 by which time, the stipulated time for filing an appeal had lapsed.
3. The Applicant explains that she filed the appeal on 11th October 2024 out of time and leave of court to file the said appeal is required before proceeding with the appeal. She attributes delay herein on error by her advocates on record.
4. She contends that the Memorandum of Appeal annexed was filed without inordinate delay and that she had an arguable appeal with high Chances of success.



5. Arguing that the application is in good faith, she also depones that the Respondents will not suffer any prejudice if it is allowed.

Determination

6. There was no response to this application despite the same being served on the Respondent. The issue is whether leave should be granted as sought.

7. 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.”

8. It is therefore clear that this Court has discretion to grant application for extension of time if the Applicant satisfies the court that he had good and sufficient cause for not filing the appeal on time.

9. The issues for consideration by the Court while exercising that discretion has been settled by superior Courts. Indeed, the Court of Appeal in *Thuita Mwangi v Kenya Airways Ltd* [2003] eKLR had this to say: -

“Over the years, the Court has, of course set out guidelines on what a single Judge should consider when dealing with an application for extension of time under rule 4 of the Rules. For instance, in *Leo Sila Mutiso v Rose Hellen Wangari Mwangi*, (Civil Application No Nai 255 of 1997) (unreported), the Court expressed itself thus: “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.”

10. In this case, the impugned judgment was delivered on 28th August 2024 but the Appellant filed the Memorandum of appeal on 11th October 2024 and this application on 15th October, 2024 which is out of time stipulated. However, that delay cannot be termed as inordinate and the explanation given is reasonable.

11. No prejudice would be occasioned to the Respondent if this application is allowed. The Applicant is given a chance to ventilate her appeal on merit.

12. In conclusion, the court makes the following Orders:-

1. Leave be and is hereby granted to the Applicant to file appeal out of time.
2. The Applicant to file and serve her Record of Appeal within 45 days from the date of this ruling.
3. The costs of this application be borne by the Applicant.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 28TH JULY, 2025.



PATRICIA GICHOHI

JUDGE

Ms Kirui for Appellant/Applicant

N/A for Respondent

Ruto, Court Assistant

