



**Kinyor & 2 others v Mwangi (Suing as the next of friend of John Macharia) (Miscellaneous Civil Application E181 of 2022) [2025] KEHC 10443 (KLR) (16 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 10443 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
MISCELLANEOUS CIVIL APPLICATION E181 OF 2022  
RN NYAKUNDI, J  
JULY 16, 2025**

**BETWEEN**

**SYLEVESTER KINYOR ..... 1<sup>ST</sup> APPELLANT**

**MAUREEN CHEPCHUMBA MISOI ..... 2<sup>ND</sup> APPELLANT**

**COLLINS KIPKORIR KOECH ..... 3<sup>RD</sup> APPELLANT**

**AND**

**STEPHEN NJUGUNA MWANGI (SUING AS THE NEXT OF FRIEND OF JOHN MACHARIA) ..... RESPONDENT**

**RULING**

Representation:

M/s Maritim & Co Advocates

M/s Kimaru Kiplagat & Co Advocates

1. What is pending before this court for determination is a Notice of Motion Application dated 1<sup>st</sup> November 2022 where the Applicants are seeking the following orders:
  - a. Spent
  - b. That this honorable court be pleased to extend time for filing of appeal outside the stipulate period of 30 days after judgement.
  - c. That this honorable court be pleased to grant stay of execution of judgment and decree of the Chief Magistrate's court in Eldoret CMCC case number 565 of 2018 and all incidental proceedings pending the hearing and determination of this application



- d. That this honorable court be pleased to grant stay of execution of judgment and decree pending the hearing and determination of the intended appeal
  - e. That cost of this application be granted to the applicant
2. The Application is based on the following grounds on the face of it among others:
- a. That the intended Appellant is aggrieved by the decision of the Chief Magistrate's court in Eldoret no. 565 of 2018 and is desirous of appealing against the same.
  - b. That the Hon. L. Kassan delivered a judgement in Eldoret CMCC No. 565 of 2018 on the 21<sup>st</sup> January, 2022 and the applicant is aggrieved by it and is desirous of lodging an appeal in the High court
  - c. That trial magistrate was on transfer and communication was made that all pending judgements before the said court was to be issued on notice
  - d. That we were not served with any judgement notice by the honorable court for the delivery of the judgement
  - e. That we were made aware of the judgement after being served by the respondent with his bill of costs
  - f. That meanwhile, the time for appeal had run out
  - g. That the plaintiff has commenced execution of the judgement and decree having obtained a proclamation order against the Applicant for attachment of moveable goods against the Applicant
  - h. That it is in the interest of justice that the defendants be allowed to appeal the judgement of the hon. L. Kassan out of the prescribed time
  - i. That the Respondent/decree-holder will not be prejudiced if the said leave is granted
  - j. That there has been no inordinate delay in bringing this application
  - k. That the applicants are willing to deposit security for costs.
3. The Application is supported by the annexed affidavit dated 1<sup>st</sup> November 2022 sworn by Sylvester Kinyor who avers as follows;
- a. That civil suit no. 565 of 2018 was concluded on the 28<sup>th</sup> January 2022 with the Honorable L. Kassan Chief Magistrate reading the judgment of the court.
  - b. That the trial court was transferred and we received communication that all the pending judgments and rulings before Hon. L. Kassan were to be delivered on notice.
  - c. That we were not served with any judgement notice for the delivery of the judgement before the trial court
  - d. That my advocate on record wrote a letter to inquire about the status of the judgment but did not receive any response.
  - e. That I am aggrieved by the decision of honorable L. Kassan C.M and wish to appeal against the entire decision



- f. That I am informed by my Advocates, which information I believe to be true that the court has powers to allow me to file an appeal out of time
- g. That it is in the interest of justice that the said appeal be heard and determined on its merits.
- h. That I swear this affidavit in support of my application for leave to file an appeal to the High Court out of time
- i. That I also swear this affidavit in support of my application that the leave operates as a stay as the plaintiff has commenced execution of the judgment and decree which if not stopped I shall suffer irreparable loss and damage.

## Decision

4. It is trite law under section 79(g) of the CPA state:

“Every appeal from a subordinate court to the High Court shall be filed within a period of thirty days from 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 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.”

5. The foundational principles on enlargement of time were laid down by the Supreme Court in the case of *Nicholas Kiptoo Arap Salat vs IEBC & 7 Others* [2014] eKLR that in exercise of such discretion it should include:

- a. Extension of time is not a right of a party. It is an equitable remedy that is only available to as deserving party at the discretion of the court;
- b. A party who seeks 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
- g. Whether in certain cases, like election petitions, public interest should be a consideration for extending time.

6. In the case of *Paul Musili Wambua v Attorney General & 2 others* [2015] eKLR the court made the following observation:

“.....it is now settled by a long line of authorities by this court that the decision of whether or not to extend the time for filing an appeal the judge exercises unfettered discretion. However, in the exercise of such discretion, the court must act upon reason(s) not based on whim or caprice. In general, the matters which a court takes into account in deciding whether or not to grant an extension of time are; the length of delay, the reason for the delay, the chances of



the appeal succeeding if the application is granted, the degree of prejudice to the respondent if the application is granted.”

7. In assessing the affidavit evidence underpinning it with the guiding principles there is good and sufficient cause for the delay notwithstanding the delay on record is inordinate the other party can be compensated by way of costs. In adherence to the above order the applicant is granted leave of 21 days to file the necessary instrument in support of the appeal and have them served upon the respondents within the compliance protocols of the law. The respondent shall have the costs if this application. This file shall be marked as closed by the dint of this ruling.

**DATED SIGNED PUBLISHED VIA CTS ELDORET THIS 16<sup>TH</sup> DAY OF JULY 2025**

.....

**R. NYAKUNDI**

**JUDGE**

