



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**Keiru v Githumbi (Miscellaneous Civil Case E088 of 2024)
[2025] KEHC 10219 (KLR) (11 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 10219 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
MISCELLANEOUS CIVIL CASE E088 OF 2024**

**MA ODERO, J
JULY 11, 2025**

BETWEEN

DANIEL WAMBUGU KEIRU APPLICANT

AND

JANE WANGUI GITHUMBI RESPONDENT

RULING

1. Before this Court is the Notice of Motion application dated 19th August 2024 by which the Applicant Daniel Wambugu Keiru seeks the following orders;-

“ 1. That this Honourable Court be pleased to grant the Applicant leave to lodge an Appeal against the judgment delivered in Nyeri Chief Magistrates Court Civil Suit No. E011 of 2023 by Honorable M. Okuche – Senior Principal Magistrate on 28th May 2024 out of time.

2. That the costs of this application be provided for.”

2. The Respondent Jane Wangui Githumbi opposed the application through the Grounds of opposition dated 4th February 2025. (These Grounds of Opposition were however not filed on the CTS).

3. The matter was canvassed by way of written submissions. The Applicant filed the written submissions dated 27th February 2025 whilst he Respondent relied upon her written submissions dated 20th June 2025.

Analysis and Determination

4. I have carefully considered the application before this court, as well as the written submissions filed by both parties. The only issue for determination is whether the prayer to file appeal out of time ought to be allowed.



5. Section 79G of the *Civil Procedure Act* provides 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 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.” [Own emphasis]

6. Therefore the statutory period allowed within which one is required to file an appeal is thirty (30) days. However with the leave of the court this statutory period may be extended.

7. In the case of *Nicholas Kiptoo Arap Salat v IEBC & 7 Others* [2014] eKLR, the Supreme Court of Kenya enunciated the principles applicable in considering an application for leave to file appeal out of time as follows:-

- “(a) Extension of time is not a right of any party. It is an equitable remedy that is only available to a deserving party at the discretion of the court.
- (b) A party who seeks for 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 by 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 respondent if the extension is granted.
- (f) Whether the application has been brought without undue delay.”

8. Likewise in the case of *Paul Musili Wambua v Attorney General & 2 Others* [2015] eKLR the Court of Appeal in considering an application for leave to file appeal out of time stated as follows:-

“.....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 the 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.”

9. The Applicant has pleaded that upon delivery of the ruling his advocate immediately applied for certified typed copies of the proceedings. Further that the handwritten copy of the ruling was illegible which added to the time which it took to have the record typed.

10. The Ruling in question was delivered on 28th May 2024. The 30 day statutory period elapsed in June 2024. This application for extension of time was made on 19th August 2024 about one (1) month after the statutory period had elapsed. I am satisfied that this application for leave was made in a timely manner.



11. The Applicant submitted that the delay was occasioned by the failure of the court registry to supply the typed and certified record in good time. The certified copy was not delivered to the Applicant's lawyer until 18th July 2024 which was close to 2½ months after delivery of the same.
12. The delay by this court in preparing records is not a new thing and quite obviously that delay impacts the capacity of parties to file their appeals within the required time. In the case of *Hassan Nyanje Charo v Khatib Mwashetani & 6 Others* [2014] eKLR, where there was delay in availing the typed certified record the court observed that

“.....would it be in the interests of justice to turn away an applicant who has a prima facie case, has exercised all due diligence in pursuit of his cause but is impeded by the slow turning wheels of the court's administrative machinery? We think not.”
13. Similarly this is a case where the Applicant had from the date of delivery of the ruling intimated his intention to appeal and made efforts to pursue the record to enable him file the appeal. The delay in preparation of the record cannot be attributed to the Applicant and he should not be penalised for that delay.
14. I have perused the Draft Memorandum of Appeal and in my view it raises triable issues.
15. Finally I do not see what prejudice the Respondent is likely to suffer should this application be allowed. The Respondent will be granted time and opportunity to respond to the appeal and to argue against said appeal during the hearing.
16. Finally I find merit in this application. The same is allowed. The Applicant is granted an extension of thirty (30) days to file and serve his appeal. Costs of this Application to be met by the Applicant.

DATED IN NYERI THIS 11TH DAY OF JULY 2025

.....

MAUREEN A. ODERO

JUDGE

