



REPUBLIC OF KENYA



**Somoni v Muangi (Appeal E109 of 2024)  
[2025] KEHC 9582 (KLR) (Family) (4 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 9582 (KLR)

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

**FAMILY**

**APPEAL E109 OF 2024**

**H NAMISI, J**

**JULY 4, 2025**

**BETWEEN**

**JOYCE BOSIBORI SOMONI ..... APPELLANT**

**AND**

**SAMMY MUSILI MUANGI ..... RESPONDENT**

**RULING**

1. This appeal arises from a divorce cause. Judgement was rendered therein on 9 January 2024. Being dissatisfied with the whole judgement and decree, the Appellant filed Memorandum of Appeal dated 12 September 2024.
2. By Notice dated 7 November 2024, the Respondent raised a preliminary objection on the following grounds:
  - i. That the appeal was filed out of the statutory time of 30 days;
  - ii. That the Appellant did not obtain the leave of this Court to file the appeal out of time;
  - iii. That the appeal offends the provisions of section 79(G) of the *Civil Procedure Act* and ought to be struck out and/or dismissed with costs to the Respondent.
3. The Appellant did not file any response to the Application.
4. The Application was canvassed by way of written submissions. Once again, the Respondent did not file any submissions.
5. In their brief submissions, the Respondent relied on the Supreme Court case of Bookpoint Ltd -vs- Guardian Bank Ltd & Guilders International Bank Ltd; Applic No. 4 (E006) of 2021, where the Court held that the filing of a Petition or Memorandum of Appeal out of time without leave is inappropriate



and renders such a petition a nullity which cannot be cured by a subsequent application for leave to enlarge time.

6. I have read the Preliminary Objection and the Submissions filed herein. The primary issue for determination is whether the Notice of Preliminary Objection has merit.
7. The Supreme Court in *Hassan Ali Joho & Another v Suleiman Said Shahbal & 2 Others* cited the leading decision on Preliminary Objections, *Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd*. (1969) EA 696, where the Court held as follows:

“a preliminary objection consists of a point of law which has been pleaded or which arises by clear implication out of pleadings and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the court or a plea of limitation or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration... a preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion”.

8. The Supreme Court in *Independent Electoral & Boundaries Commission v Jane Cheperenger & 2 Others* [2015] eKLR made the following observation as relates to Preliminary Objections:

“... The true preliminary objection serves two purposes of merit: firstly, it serves as a shield for the originator of the objection—against profligate deployment of time and other resources. And secondly, it serves the public cause, of sparing scarce judicial time, so it may be committed only to deserving cases of dispute settlement. It is distinctly improper for a party to resort to the preliminary objection as a sword, for winning a case otherwise destined to be resolved judicially, and on the merits.”

9. The legal threshold for a preliminary objection to lie is well settled. *Gikonyo J in Catherine Kawira v Muriungu Kirigia* [2016] eKLR put it succinctly thus;

“(5)I do not want to reinvent the wheel on the legal threshold for Preliminary Objection. It is now well-settled principle that a preliminary objection should be a point of law that is straight-forward and not obscured in factual details for it to be proved. Again, it must be potent enough to decimate the entire suit or application. On this I am content to cite the case of *Mukisa Biscuit Manufacturing Company Limited V West End Distributors Limited* (1969) EA 696 where it was stated as follows:

“So far as I’m aware, a preliminary objection consists of a point of law which has been pleaded, or which arises by clear implication out of pleadings, and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the Court, or a plea of limitation, or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration.”

10. Section 79G of the *Civil Procedure Act*, Cap 21 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 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.

11. Whereas the impugned judgement was delivered on 9 January 2024, it was not until 12 September 2024 that the Appellant lodged this appeal. The Memorandum of Appeal makes reference to leave granted on 30 August 2024, but the Appellant did not place the same before the Court for consideration. In fact, the Appellant has not responded to the Preliminary Objection at all.
12. The Appellant filed the Memorandum of Appeal nine months late. There is no good cause demonstrated by the Appellant why the appeal was not filed in time. Under the Rules, where the Appellant realised that time had lapsed, she ought to have moved the Court and sought leave to file the appeal out of time, giving reasons.
13. In the case of Stanley Kahoro Mwangi, Timothy Njoroge & Joseph Mwangi (suing on behalf of Twendane Company Ltd) -vs- Kanyamwi Trading Company Ltd [2015] KECA 967 (KLR) the Court held that that an applicant seeking to file an appeal out of time must have a plausible and satisfactory explanation for the delay for the court to address. The right of appeal must be exercised within the rules of procedure applicable to ensure justice to all parties.
14. An appeal filed out of time cannot be cured under any other law or procedure. It cannot stand or be argued. I, therefore, uphold the Preliminary Objection and dismiss this cause with costs to the Respondent, assessed at Kshs 20,000/-.

**DATED AND DELIVERED AT NAIROBI THIS 4 DAY OF JULY 2025**

**HELENE R. NAMISI**

**JUDGE OF THE HIGH COURT**

Delivered on virtual platform in the presence of:

For Appellant: Mr. Omondi

For Respondent: Mr. Muthama

Court Assistant: Libertine Achieng

