



**Veroway Ventures Limited v Mwaka & another (Miscellaneous Civil Application E113 of 2024) [2025] KEHC 10262 (KLR) (17 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 10262 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT THIKA  
MISCELLANEOUS CIVIL APPLICATION E113 OF 2024**

**TW OUYA, J  
JULY 17, 2025**

**BETWEEN**

**VEROWAY VENTURES LIMITED ..... APPLICANT**

**AND**

**OSCAR MWAKA ..... 1<sup>ST</sup> RESPONDENT**

**LENAH KASUKI MULATYA ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. The applicant, Veroway Ventures Limited, approached this court vide a Notice of Motion dated 23<sup>rd</sup> July, 2024, seeking leave to file its intended appeal out of time together with costs of the application.
2. In the grounds premising the Motion, and in the depositions made in the supporting affidavit sworn on 23<sup>rd</sup> July, 2024, by Mary Wangechi King'ori; the applicant alleged that it took long to issue instructions to her learned counsel to lodge an appeal to this court within the stipulated time due to financial constraints she was experiencing at the time, which were factors beyond her control.
3. She contended that the law provides room for filing an appeal out of time, and this court has the inherent powers to grant the orders sought. The applicant further contended that her appeal has high chances of success as such, this court should grant her leave to file the intended appeal out of time.
4. The application was opposed by the respondents vide a replying affidavit sworn by the 1<sup>st</sup> respondent, Oscar Mwaka on 15<sup>th</sup> October, 2024. In the affidavit, the respondents alleged that the application was incompetent and bad in law, as the deponent Mary Wangechi King'ori was not the applicant, and neither did she demonstrated her relationship with the intended appellant to warrant her swear an affidavit on behalf of the intended appellant.
5. The respondents alleged that there was no letter from the intended appellant attached to the affidavit of Mary Wangechi King'ori, showing that she had the authority to swear an affidavit on behalf of the



- appellant company and that the said Mary only deposes how she will be prejudiced if the application is not allowed, but she does not demonstrate how such prejudice will affect the intended appellant.
6. The respondents contended that no steps have been taken by the applicant to demonstrate that they are keen on prosecuting the appeal, if their application is allowed, considering that the applicant has not sought for certified copies of the proceedings or paid for them.
  7. The respondents averred that the length of delay and reasons for delay in filing the instant application has not been explained, and that the intended appeal is hopelessly weak and has no chances of success. The respondents further averred that the applicant has not demonstrated the prejudice it will suffer should the application be denied, as such, this court should dismiss the application with costs.
  8. In response to the averments contained in the replying affidavit, Mary Wangechi King'ori, swore a supplementary affidavit on 14<sup>th</sup> November, 2024; wherein she stated that she is a director of the applicant company, hence she can sign all pleadings on its behalf. She contended that she stands to suffer prejudice if the application is not granted as she maybe locked out from the seat of justice. Ms. King'ori further contended that she has an arguable appeal with high probability of success and that the present application was brought without unreasonable delay.
  9. The application was canvassed by way of written submissions, following the directions issued by this court on 24<sup>th</sup> July, 2024. The applicant's written submissions dated 3<sup>rd</sup> October, 2024, were filed by Kanyi Kiruchi & Company Advocates, while those by the respondents were filed by Nzamba Kitonga Advocates LLP.
  10. In its written submissions, the applicant alleged that it delayed with a period of about ten (10) days in filing its appeal on time, which is inordinate and regrettable. The applicant submitted that the reason for the delay was due to lack of funds required to instruct its advocates on record to file the appeal.
  11. The applicant further submitted that its intended appeal has high chances of success and it is only fair that it is granted a chance to bring forth her case in the quest for justice. The applicant contended that the respondents will not be prejudiced should the application be allowed as both parties are interested in getting to the truth of the matter. regarding costs of the application, the applicant submitted that costs follow the event, and it has demonstrated that it is deserving of costs.
  12. The respondents on the other hand submitted that there is no letter of authority from the appellant to show that Mary Wangechi King'ori, is an authorized agent or representative of the appellant, and neither has she sworn the supporting affidavit on behalf of the appellant. The respondents further submitted that Mary Wangechi King'ori, is camouflaging herself as the appellant in order to champion her own interests as opposed to those of the appellant.
  13. The respondents contended that the applicant has not demonstrated any steps taken to expedite the intended appeal as no requests of proceedings have been made to court to date; and that no reasonable excuse for the delay has been mentioned in the application.
  14. The respondents further contended that the present application is defective in substance, devoid of merit as such, this court should dismiss the same with costs.
  15. I have duly considered the application, the affidavits in support of and in opposition to the application, together with the parties rival written submission, and I find that the main issue for determination is whether the applicant's prayer for leave to file his intended appeal out time is merited.
  16. Before delving into the merits of the application, I would first like to consider the complaint by the respondent that the application is incompetent and bad in law, owing to the fact that Ms. Mary



Wangechi King'ori, has not demonstrated that she has the authority to swear an affidavit on behalf of the applicant. I have noted from the records of this court, that Ms. Mary Wangechi, has adduced a copy of the CR12 of the applicant, demonstrating that she is a director of the said company. She further swore a supplementary affidavit on 14<sup>th</sup> November, 2024, wherein she stated that she was the director of the applicant company, hence she was authorized to sign all pleadings on its behalf.

17. The Court of Appeal in *Meya Agri Traders Ltd versus Elgon House (2010) Ltd* [2023] KECA 574 (KLR) held as follows:

“In our view, once the deponent swore that he is a director of the respondent, and that he was duly authorized, the judge could not rule otherwise in the absence of evidence to counter or contradict him. Our views herein resonate with the pronouncements of this Court in its earlier decision in *Makupa Transit Shade Limited & another v Kenya Ports Authority & another* [2015] eKLR where it stated thus: “In our view, the Authority, as with other corporate bodies, has its affidavits deponed on its behalf by persons with knowledge of the issues at hand who have been so authorised by it. It was therefore sufficient for the deponents to state that “they were duly authorised.” It was then upto the appellants to demonstrate by evidence that they were not so authorised.”

18. In the absence of evidence by the respondents that Mary Wangechi King'ori lacked the authority to swear an affidavit on behalf of the applicant, this court cannot rule otherwise.

19. Turning now to the above issue isolated for determination, the provision of law that empowers this court to consider an application of this nature, where an applicant seeks enlargement of the prescribed time to file an appeal to the high court outside of the stipulated time is contained in Section 79G of the *Civil Procedure Act*, which 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.”

20. A reading of the above provision of law will reveal that this court has a wide and unfettered discretion to consider whether or not to enlarge the time for filing an appeal out of the stipulated time, provided that the applicant is able to demonstrate to this court that he or she had a good and sufficient reason for not filing the appeal on time.

21. That being said, some of the main factors which a court should consider when exercising its discretion in determining whether or not to grant an applicant leave to file his appeal out of time, have been enshrined in the Court of Appeal case of *Thuita Mwangi Versus Kenya Airways Ltd* (2003) eKLR as follows:

- i. The length of delay.
- ii. The reason for the delay.
- iii. The chances of the appeal succeeding if the application was allowed.
- iv. The degree of prejudice to the respondent if the application was allowed.



22. Additionally, the Court of Appeal in *Paul Musili Wambua versus Attorney General & 2 others* (2015) eKLR expressed itself as follows:

“...it is now well 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 whims or caprice. In general, the matters which a court takes into account in deciding whether 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.”

23. Applying the above principle to the present case, the judgement in this case, which the applicant intends to appeal, was delivered on 3<sup>rd</sup> June, 2024, as such, the statutory prescribed time for filing of its intended appeal expired on 3<sup>rd</sup> July, 2024. This is as per the method for computation of time as set out under Section 57 of the *Interpretation and General Provisions Act* and Order 50 rule 3 of the Civil Procedure Rules.

24. The applicant then filed the present application on 23<sup>rd</sup> July, 2024, which is a period of delay of about twenty days (20). The reasons advanced by the applicant for not filing his intended appeal within the stipulated time, is that it did not have sufficient funds at the time to instruct its advocate to file their intended appeal.

25. I have perused the grounds advanced in the draft Memorandum of Appeal and I am of the view that the same is not frivolous as it raises pertinent issues that deserve consideration by this court. Although I am of the considered view that the reasons advanced by the applicant for not filing his intended appeal within the stipulated time are not convincing, it is important that the applicant be given an opportunity to ventilate on its grievances in an appeal before this court.

26. Furthermore, the applicant has a right under Article 50 (1) of the *Constitution* of Kenya, to have any dispute that can be resolved by application of law, decided in a fair and public hearing. The said provision of the *Constitution* stipulates as follows:

“Every person has the right to have any dispute that can be resolved by the application of law decided in a fair and public hearing before a court or if appropriate another independent and impartial tribunal or body.”

27. The applicant also has a right to Access to justice as enshrined under Article 48 of the *Constitution* of Kenya. As such, this court would be denying the applicant its constitutionally protected rights, were it to deny it an opportunity to be heard on appeal. On the other hand, the respondents may not suffer any prejudice which cannot be mitigated by an award of costs.

28. Given the foregoing, I am of the considered view that the application has merit and should be allowed and the applicant given time to file the intended appeal.

29. Final Orders:

- i. The application is allowed
- ii. The applicant granted thirty days (30) days in which to file the intended appeal.

**DATED, SIGNED AND DELIVERED ELECTONICALLY THIS 17TH JULY 2025.**

**HON. T. W. Ouya**



**JUDGE**

