



REPUBLIC OF KENYA



KENYA LAW
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Attorney General & 2 others v Momanyi (Miscellaneous Civil Application E007 of 2025) [2025] KEHC 13231 (KLR) (25 September 2025) (Ruling)

Neutral citation: [2025] KEHC 13231 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT GARISSA
MISCELLANEOUS CIVIL APPLICATION E007 OF 2025
JN ONYIEGO, J
SEPTEMBER 25, 2025**

BETWEEN

THE HON ATTORNEY GENERAL 1ST APPLICANT

GARISSA COUNTY GOVERNMENT 2ND APPLICANT

SHEIKH AIRE ALI 3RD APPLICANT

AND

WYCLIFF OBUKI MOMANYI RESPONDENT

RULING

1. The applicants vide a notice of motion application filed under certificate of urgency dated 13.05.2025 and brought under Order 42 Rule 6, Order 50 Rule 6 and Order 51 Rule 1 of the Civil Procedure Rules 2010 and section 3A and 79G of the [Civil Procedure Act](#) sought for the following orders:
 - i. That the Honourable Court be pleased to grant the applicants/intended appellants extension of time to file and serve memorandum of appeal and record of appeal against the whole judgment of the Principal Magistrate Hon. J. Omwange at the Magistrates Court at Garissa dated 25.09.2024.
 - ii. That there be a temporary stay of execution of the judgment of Hon. J. Omwange P.M. dated 25.09.2024 and consequential decree pending the hearing and determination of this application inter partes.
 - iii. That there be a temporary stay of execution of the judgment of Hon. J. Omwange dated 25.09.2024 and consequential decree pending the hearing and determination of the applicants/intended appellants appeal against the said judgment and decree.
 - iv. That costs of this application be provided for.



2. The application is supported by the affidavit sworn by Wilkistar Mumbi deposing that the suit before the trial court being CMCC No. 21 of 2020 was instituted by the respondent against the applicants seeking damages arising from a road accident. That the matter was heard and a judgment delivered on 25.09.2024 wherein the applicants were ordered to pay the respondent as follows: general damages of Kes. 5,000,000/-, loss of earnings and earning capacity of Kes. 2,016,000/-, special damages of Kes. 908, 652 as well as costs of the suit and interest from the date of judgment until fully paid.
3. It was averred that the judgment was erroneous hence the need for this appeal. That the applicants only came to learn of the impugned judgment when they received a letter dated 10.03.2025 from the respondent. That by that time, 30 days had lapsed from the day of judgment hence the application herein. Counsel averred that the intended appeal is meritorious and further raises serious issues of law which require adjudication and determination by this Honourable Court. Consequently, this court was urged to allow the prayers sought in the application.
4. In opposing the application, the respondent filed a replying affidavit sworn by self on 23.05.2025 deposing that the court ought not exercise its discretion by allowing the application herein for the reason that the same does not meet the threshold as provided for by the law. That the applicants did not approach this court with clean hands as the suit was brought late in the day. It was averred that the applicants participated in the suit before the trial court and additionally, that judgment notice was issued of the impending delivery of the impugned judgment. That the applicants cannot purport to feign ignorance of the impugned judgment as the court issued a notice of the same on the CTS.
5. Besides, the applicant attached a letter dated 3-12-2024 addressed to the office of the attorney general notifying them of the entry of judgment. The said letter marked WOM -1 was duly acknowledged by the office of the Attorney General on 4-12-24
6. It was averred that the second prayer for stay of execution cannot issue pending the determination of the intended appeal for the reason that no leave has been granted so far. This court was therefore urged to dismiss the application herein with costs.
7. The application was canvassed by way of written submissions.
8. The applicants filed submissions dated 10.07.2025 urging in regards to the following issues:
 - i. Whether the court should exercise its discretion to grant the applicants leave to file their appeal out of time.
 - ii. Whether the applicants have met the prerequisite for grant of stay of execution pending appeal.
9. On the first issue, the applicants urged that section 79G of the *Civil Procedure Act* provides for time lines within which an appeal from the subordinate court is to be lodged to the High Court. That when the applicants learnt of the impugned judgment, the 30 days had since lapsed from the date of judgment as the same only came to their notice when they received a letter from the respondent notifying them of the impugned judgment. Reliance was placed on the case of Nicholas Kiptoo Korir arap Salat vs IEBC & 7 Others [2014] eKLR where the court laid down the principles applicable in an application for leave to appeal out of time.
10. It was contended that no judgment notice was issued to the applicants despite the judgment date being adjourned severally by the court. That after counsel received the letter for the respondents, she had to brief their clients, the applicants herein of the outcome of the matter in which her clients advised that the judgment be appealed against hence the application herein.



11. On the second issue, the applicants argued that they have an arguable appeal to enable this court allow the application herein. To that end, the applicants relied on Order 42 Rule 6 of the Civil Procedure rules where the prerequisites of grant of stay pending appeal is provided.

12. The respondents on the other hand filed submissions dated 03.07.2025 urging that the notice on delivery of the impugned judgment was issued on 25.09.2024 via CTS thus all the parties were duly notified of the judgment date. That the applicants waited for over 8 months after the judgment had been delivered and over 5 months after being reminded to honour the judgment award and to file the application herein. Reliance was placed on the case of *Obange & another vs Oganyo & 4Others*, Civil Appeal No. E033 of 2021 where the court held that:

“extension of time being a creature of equity, one can only enjoy if he acts equitably; he who seeks equity must do equity. Hence, one has to lay a basis that he was not at fault so as to let time to lapse. Extension of time is not a right of a litigant against a court, but a discretionary power of the courts which litigants have to lay a basis where they seek courts to grant it.

The rules of equity dictate that equity only aids the vigilant and not the indolent. In the absence of evidence as to the steps and/or efforts undertaken towards successfully lodging an appeal within the given time prescribed by law, this court is not persuaded by the applicant’s explanation that its former advocates on record failed to act on its instructions to file the appeal in good time and that it should not be punished for its counsel’s mistake. That in itself does not qualify as a satisfactory explanation or otherwise as to what occasioned the delay in lodging an appeal in good time”.

13. The respondent argued that the applicants were guilty of laches as the allegation that they were aware of the impugned judgment was factually countered by the notice marked WOM – 1 which is a letter duly received on 04.12.2024. To that end, this court was urged to dismiss the application herein for the reason that the same was not made in good faith.

14. The court having perused the pleadings by the parties, in its considered opinion, the issues for determination are as follows: -

- i. Whether to extend the time for filing the appeal out of time
- ii. whether to deem the filed memorandum of appeal as duly filed.
- iii. Whether to grant order of stay of execution.

15. Under Section 79G of the *Civil Procedure Act*, time for filing an appeal from a judgment of the subordinate court to the High Court is 30 days. The same provides that:

“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”.

16. When an application for extension of time is before a court, the court ought to take into account several factors as was observed by Odek J.A. in the case of *Edith Gichugu Koine vs Stephen Njagi Thoithi* [2014] eKLR thus:

“Nevertheless, it ought to be guided by consideration of factors stated in many previous decisions of this court including, but not limited to, the period of delay, the reasons for the



delay, the degree of prejudice to the respondent if the application is granted, and whether the matter raises issues of public importance, amongst others...”.

17. There is also a duty now imposed on courts to ensure that the factors considered are in consonant with the overriding objective of civil litigation, that is to say, the just, expeditious, proportionate and affordable resolution of disputes before the court.
18. As earlier stated, it is obvious that the application seeking leave to appeal out of time was filed out of the 30 days stipulated in Section 79G of the Civil Procedure Act.
19. In this case, the judgment sought to be challenged was rendered on 25.09.2024. Therefore, it follows that any appeal challenging that decision ought to have been filed within the 30 days of the delivery of the impugned decree/order as provided by the law. Instead, the applicant has come before this court seeking to have the time enlarged and the said leave do operate as a stay of execution.
20. The respondent’s counsel viciously opposed the application stating that the same was undeserved noting that all the parties were notified via the CTS of the impending judgment. That the applicants thus cannot be heard claiming that they were not aware of the judgment. Further, that the instant application was filed on 13.05.2025, about 8 and a half months later and the same cannot be said not to be inordinate.
21. The reason given for the delay in this application to validate the appeal is that when the applicants learnt of the impugned judgment, thirty days had lapsed from the date of judgment as the same only came to their notice when they received a letter dated 10-3-2025 from the respondent notifying them of the impugned judgment. Additionally, that when counsel received the letter from the respondents, she had to brief their clients, the applicants herein on the outcome of the matter in which their clients, advised that the judgment be appealed hence the application herein.
22. In determining whether this court ought to widen the time within which the applicants can file an appeal, this court relies on the case of Kamlesh Mansukhalal Damki Patni vs Director of Public Prosecution & 3 Others [2015] eKLR, in which the Court of Appeal articulated thus:

“It must be realized that courts exist for the purpose of dispensing justice. Judicial Officers derive their judicial power from the people or, as we are wont to say in Kenya, from Wanjiku, by dint of Article 159 (1) of the Constitution which succinctly states that “judicial authority is derived from the people and vests in, and shall be exercised by the courts and tribunals established by or under this Constitution.” Judicial Officers are also State officers, and consequently are enjoined by Article 10 of the Constitution to adhere to national values and principles of governance which require them whenever applying or interpreting the Constitution or interpreting the law to ensure, inter alia, that the rule of law, human dignity and human rights and equity are upheld. For these reasons, decisions of the Courts must be redolent of fairness and reflect the best interest of the people whom the law is intended to serve. Such decisions may involve only the rights and obligations of the parties to the litigation inter se (and hence only the parties’ interests) and while others may transcend the interest of the litigants and encompass public interest. In all these decisions, it is incumbent upon the Court in exercising its judicial authority to ensure dispensation of justice as this is what lives up to the constitutional expectation and enhances public confidence in the system of justice.
23. It is clear from the court record that the appeal herein was filed over 8 months since delivery of judgment. According to the applicants, they came to know of the entry of judgment on 10-03-2025



yet filed the instant application on 13-05-2025. It is clear and not even controverted that the applicants were notified of entry of judgment vide a letter dated 3-12-2024 and acknowledged by the office of the attorney General on 4-12-2024.

24. In *Susan Ogutu Oloo & 2 others vs Doris Odindo Omolo* [2019] eKLR where Otieno-Odek JA held as follows: -

“The instant application is founded on Rule 4 of the Rules of this Court. In an application for extension of time, the single Judge has discretion. I am aware that the discretion I have is to be exercised judiciously and not whimsically or capriciously. The guiding principles on the issue of extension of time was laid out by the Supreme Court in *Nicholas Kiptoo arap Korir Salat V. IEBC* (2014) eKLR Sup. Ct. Application No. 16 of 2014.

The Supreme Court aptly stated extension of time is not a right of a party; a party who seeks extension of time has the burden of laying a basis to the satisfaction of the Court. Of paramount importance, the reason for delay must be explained to the satisfaction of the Court. Further, the application for extension must be brought without undue delay and it must be demonstrated if the respondent will not suffer prejudice if extension is granted”.

25. In the instant case, no basis has been laid as to why the appeal was not filed in time or this application immediately after notification of entry of judgment on 4-12-2024. Rules of procedure and statutory timelines are midwives in litigation and are therefore set for a purpose hence cannot be ignored at will or thrown under the bus. The order sought being an order of equity, he who seeks equity must demonstrate that he is deserving court’s discretion. Justice must be balanced. The judgment creditor is equally entitled to justice and expeditious determination of his case.

26. Besides, with the CTS system, entry of judgment and delivery thereof is relayed to all parties automatically upon uploading the same. Assuming they did not see the uploaded judgment on the day of delivery, why did it take long from 4-12-2024 to file this application on 13-05-2025. This is purely an act of indolence hence courts should not be called upon to aid the indolent at the expense of an innocent litigant.

27. In *Martin Kabaya Vs. David Mungania Kiambi Nyeri Civil Application 12 of 2015* the court had this to say;

“The need for judicial proceedings to be concluded in a timely fashion is too plain for argument. It is a desideratum of a rational society. A justice that is too long in coming, encumbered by sloth or inattention on the part of those who seek it, is a pain and a bother. An expensive one at that. A justice that comes too late in the day is a tepid drop on perched lips that quenches no thirst. A justice delayed is a justice denied. Litigants, especially those summoned by plaints, petitions, applications or appeals are vexed when those who summoned them hence go to sleep yet the proceedings and processes they engendered remain alive but comatose, a burden to the mind and to the pocket. And they form part of the dead weight the Judiciary bears as backlog.”

28. Indeed, what amounts to inordinate delay in an application for extension of time is relative. Even two months can be said to be inordinate delay depending on the circumstances of each case. In the case of *Velji Shahmad vs. Shamji Bros. and Popatlal Karman & Co.* [1957] EA 438, it was held that:

“In the interests of the public the court ought to take care that appeals are brought before it in proper time and before the proper court or registry and when a judgement has been



pronounced and the time for appeal has elapsed without an appeal the successful party has a vested right to the judgement which ought, except under very special circumstances, to be made effectual. And the Legislature intended that appeals from judgements should be brought within the prescribed time and no extension of time should be granted except under very special circumstances.”

29. Having held that there is no ground advanced sufficient enough to extend time, the only inevitable finding to make is that of dismissing the prayer for extension of time.
30. Having dismissed the application for extension of time, the stay application is rendered moot naturally hence no need for consideration. As to costs, the same shall follow the event hence awarded to the respondent. Accordingly, the application is dismissed in its entirety with costs to the respondent.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 25TH DAY OF SEPTEMBER 2025

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J.N.ONYIEGO
JUDGE

