



REPUBLIC OF KENYA



KENYA LAW

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**Ayiemba v Weda (Civil Miscellaneous Application E115 of 2025)
[2025] KEHC 12608 (KLR) (17 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 12608 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
CIVIL MISCELLANEOUS APPLICATION E115 OF 2025**

**A MABEYA, J
SEPTEMBER 17, 2025**

BETWEEN

ELVIS AYIEMBA APPLICANT

AND

GRACE WEDA RESPONDENT

RULING

1. This is a ruling on the Motion on Notice dated 23/6/2025 by the applicant. The same was made under Articles 25, 50 and 159 of *the Constitution*, sections 1A, 1B, 3A & 79G of the *Civil Procedure Act* and Orders 50 Rule 6.
2. The Motion sought leave to appeal out of time against the judgment of Hon. G. Serem delivered on the 19/11/2024 in SCC Case No. E216 of 2023. The grounds thereof were set out in the body of the Motion and the Supporting affidavit of Elvis Ayiemba sworn on 23/6/2025.
3. The grounds were that; a judgment was made on 19/11/2024 in favour of the respondent. That the applicant requested certified copies of ruling and proceedings to facilitate the preparation of the appeal but the same were not supplied within a reasonable time, a matter that was entirely outside his control.
4. The application was opposed vide the replying affidavit of Judith A. Nyagol sworn on 14/7/2025. She deposed that the instant application has been brought six (6) months after the lapse of statutory period amounted to an inordinate delay and that the reason advanced for the delay is not plausible as judgment was delivered in the presence of the applicant's counsel and thereafter immediately uploaded on CTS.
5. That the applicant has not demonstrated any steps taken to pursue the proceedings after uploading the request for proceedings on 4/12/2024 and was merely woken up by the respondent's application for execution of costs awarded.



6. I have considered the record and the respective parties' contestations. This is an application for leave to appeal out of time.
7. The jurisdiction to extend time for filing an appeal out of time is to be found in the proviso to section 79G of the Civil Procedure Act. The section provides: -

“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.”

8. An application for extension of time is discretionary. But it must be exercised within certain parameters. In deciding whether to grant an extension of time or not, the Court will consider the length of the delay, the reason for the delay, the degree of prejudice to be suffered by the opposite party and probably, the chances of success of the appeal if the application is granted. See *Thuita Mwangi v Kenya Airways 2003*) eKLR.
9. On the length of time, the Judgment was delivered on 19/11/2024 and uploaded on the CTS on the same day. The appeal was supposed to be filed by the 20/12/2024. However, the present application was made on 23/6/2025 about 6 months and 3 days out of time. This is an inordinate delay.
10. As to the reason for the delay, in the body of the Motion, the applicants stated in ground No. (b) of the Motion that: -

“The applicant duly applied for proceedings and judgement of the Court, which were only availed after an inordinate delay occasioned by administrative inefficiencies not attributable to the applicant”

11. From the replying affidavit of the respondent, it turned out that not only did the applicant attend the delivery of the judgment, but that the said judgment was immediately posted on the CTS. That further despite seeking copies of type proceedings vide its letter of 27/11/2024, the said letter was uploaded on the 4/12/2025 and subsequently no further efforts were made by the applicant to pursue the said proceedings. These averments were never controverted, contradicted nor challenged. They remained unchallenged.
12. From the foregoing, it is clear that the application for extension of time was but an afterthought. The applicant did not require the proceedings to prepare the Memorandum of appeal. The grant of extension of time is a discretionary relief.
13. Accordingly, the Court finds the application dated 23/6/2025 to be without merit and dismisses the same with costs.

It is so ordered.

DATED AND DELIVERED AT KISUMU THIS 17TH DAY OF SEPTEMBER, 2025.

A. MABEYA, FCI Arb

JUDGE

