



Mwangi v County Government of Kiambu (Formerly Municipality Council of Thika) (Miscellaneous Civil Application E027 of 2025) [2025] KEHC 12640 (KLR) (9 September 2025) (Ruling)

Neutral citation: [2025] KEHC 12640 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT THIKA
MISCELLANEOUS CIVIL APPLICATION E027 OF 2025
FN MUCHEMI, J
SEPTEMBER 9, 2025**

BETWEEN

JAMES NJUGUNA MWANGI APPLICANT

AND

COUNTY GOVERNMENT OF KIAMBU (FORMERLY MUNICIPALITY COUNCIL OF THIKA) RESPONDENT

RULING

1. The application dated 24th February 2025 seeks for orders of leave to file an appeal out of time against the ruling in Thika CMCC No. 440 of 2013 delivered on 29th July 2020.
2. The respondent filed a Replying Affidavit dated 26th June 2025 in opposition to the application.

Applicant's Case

3. The applicant states that the ruling in Thika CMCC No. 440 of 2013 was delivered on 29th July 2020 whereby the trial court dismissed his application seeking to reinstate the suit which was dismissed on 11th June 2018. Being aggrieved with the said decision, the applicant states that he intends to lodge an appeal however the statutory time allowed has lapsed.
4. The applicant states that the ruling to reinstate the suit was scheduled to be delivered on 29th July 2020 but his advocates were not aware that the ruling had been delivered since their offices were closed at the time due to the covid 19 outbreak. The applicant further states that when his advocates resumed after curfew rules were eased, they moved offices from Top Plaza on Kindaruma Road to Delamere Flats on Jakaya Kikwete Road and his file was misplaced during the move. It was not until late June 2023 that his file was located and he requested for a copy of the ruling.



5. The applicant states that his advocates filed an application for leave to file an appeal out of time on 29th September 2023 before the court below but the same was dismissed on 15th January 2025 due to lack of jurisdiction.
6. The applicant avers that his intended appeal is arguable and has very high chances of success. In the event the orders sought are not granted, the applicant states that he shall suffer great prejudice that cannot be compensated by way of damages.

The Respondent's Case

7. The respondent relies on Section 79G of the *Civil Procedure Act* and states that the applicant has not provided any sufficient reason why it has taken him five years to file an appeal. Further, the excuse of moving offices is an afterthought by the applicant and is a waste of the court's time.
8. The respondent avers that there has never been a cause of action against it in the trial suit.
9. This court gave directions to the parties to file submissions. The record shows that the applicant filed his submissions whereas the respondent opted not to participate in filing submissions.

The Applicant's Submissions.

10. The applicant relies on Section 79G of the *Civil Procedure Act* and the case of Nicholas Kiptoo arap Korir Salat v Independent Electoral and Boundaries Commission & 7 Others [2014] eKLR and submits that a period of 4 years and 7 months has lapsed before the present application has been filed however his file was misplaced by his advocates when they moved offices after the pandemic but was traced in June 2023 when he discovered that the ruling had been delivered in the year 2020. The applicant argues that the mistake by his counsels should not be visited upon him.

The Law

Whether the court should exercise its discretion to grant the applicant leave to file his appeal out of time;

11. Section 79G of the *Civil Procedure Act* states:-

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.
12. It is clear from the wording of section 79G of the *Civil Procedure Act* that before the court considers extension of time, the applicant must satisfy the court that that he has good and sufficient cause for filing the appeal out of time. This principle was enunciated in the case of Diplack Kenya Limited v William Muthama Kitonyi [2018]eKLR an applicant seeking enlargement of time to file an appeal or admission of an already filed appeal must show that he has a good cause for doing so.



13. The Supreme Court in the case of *Nicholas Kiptoo Korir arap Salat v IEBC and 7 Others* [2014] eKLR enunciated the principles applicable in an application for leave to appeal out of time. The court stated inter alia that:-

“The underlying principles a court should consider in exercise of such discretion should include:-

- 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.

14. Similarly in the case of *Paul Musili Wambua v Attorney General & 2 Others* [2015]eKLR, the Court of Appeal in considering an application for extension of time and leave to file the Notice of Appeal out of time stated the following:-

“.....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 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.”

15. The record shows that the ruling in *Thika CMCC No. 440 of 2013* was delivered on 29th July 2020 and the applicant filed the current application on 4th March 2025. This is approximately four years and eight months outside the time limited for filing an appeal. The applicant has attributed the delay in filing his appeal to his advocates moving offices after the covid 19 pandemic.

16. The law is clear that it is the responsibility of the litigant to be vigilant and proactive in following up on their cases. This principle was enunciated in the case of *Habo Agencies Limited v Wilfred Odhiambo Musingo (Civil Appeal Application 124 of 2004)* [2015] KECA 987 (KLR) (16 January 2015) (Ruling) where the court held:-

“It is not enough for a party in litigation to simply blame the advocates on record for all manner of transgressions in the conduct of the litigation. Courts have always emphasised that parties have a responsibility to show interest in and to follow up their cases even when they are represented by counsel.”



17. Further in the case of *Rajesh Rughani v Fifty Investment Ltd & Another* [2005] eKLR, the Court of Appeal held:-

“It is not enough simply to accuse the advocate for failure to inform as if there is no duty on the client to pursue his matter. If the advocate was simply guilty of inaction that is not excusable mistake which the court may consider with some sympathy.”

18. It is evident from the record, that the applicant is the party that instituted the suit in Thika CMCC No. 440 of 2013 and as such he has a duty as the plaintiff to proactively pursue his case. Furthermore, upon further perusal of the record, the trial suit was instituted on 10th June 2013 and the suit was dismissed for want of prosecution and on several occasions, the matter has not proceeded due to the indolence of the applicant. The conduct of the applicant throughout the proceedings has left a lot to be desired. The applicant has been indolent in prosecuting the trial suit. Furthermore, the reasons for the delay in lodging the appeal are not plausible or sufficient to warrant the court to exercise its discretion in favour of the applicant. Additionally, the applicant has taken over 4 years to file the current application in court. It is my considered view that a delay of 4 years and 8 months is inordinate and inexcusable.

19. On the perusal of the intended Memorandum of Appeal, the intended appeal does not raise arguable points of law and fact. I have perused a copy of the lower court proceedings and appreciated the history of the matter. Although directions were issued for the ruling of the trial court to be availed, the applicant did not produce a copy of the same. Thus, without delving to the merits of the appeal, it is my view that the chances of the appeal succeeding if the instant application is granted are limited. In the circumstances it is my considered view that the applicant has not established to the satisfaction of the court that time ought to be enlarged to enable him file his appeal.

20. It is thus my considered view that the application dated 24th February 2025 lacks merit and is hereby dismissed with costs to the respondent.

21. It is hereby so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT THIKA THIS 9th DAY OF SEPTEMBER 2025.

F. MUCHEMI

JUDGE

