



**Samuel v Mwakio (Miscellaneous Civil Application E025 of 2023)
[2024] KEHC 2694 (KLR) (14 March 2024) (Ruling)**

Neutral citation: [2024] KEHC 2694 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VOI
MISCELLANEOUS CIVIL APPLICATION E025 OF 2023
GMA DULU, J
MARCH 14, 2024**

BETWEEN

DANIEL KIRIGHA SAMUEL PROPOSED APPELLANT

AND

ALIMA MWAKIO RESPONDENT

RULING

1. Before me is an application by way of Notice of Motion dated 25th March 2023 and filed on 4th April 2023 under Section 1A, 1B, 3A, 75 and 95 of the [Civil Procedure Act](#) (Cap.21) and Order 50 Rule 6 of the [Civil Procedure Rules](#).
2. The prayers in the application are as follows:-
 1. The proposed appellant be granted leave to appeal out of time against the whole judgment of the Principal Magistrate Court at Voi delivered on 18th November 2022 in Misc. Succession Cause No. E031 of 2021 without notice to the applicant.
 2. That the Memorandum of Appeal annexed hereto be deemed as duly filed and served.
 3. That the costs of this application be in the cause.
3. The application has grounds on the face of the Notice of Motion that despite the applicant applying for and receiving copy of the judgment, he was financially amputated as he had a patient who needed urgent medical attention, which interfered with raising the intended legal fees; and that no prejudice will be suffered by the respondent if the orders sought are granted.
4. The application was filed with a supporting affidavit sworn on 25th March 2023 by the applicant which amplifies the grounds of the application, and annexes a copy of the subject judgment.



5. The application is opposed through a replying affidavit sworn by Alima Mwakio the respondent on 18th April 2023 in which it was deponed that the application is an afterthought meant to deprive or delay the respondent from using the plot; and that the reasons given for the delay were lame excuses.
6. The application was canvassed through written submissions. In this regard, I have perused and considered the submissions filed by Mwazighe & Company Advocates for the applicant, as well as the submissions filed by Mwanyumba & Company Advocates for the respondent.
7. Having considered the application, documents filed, and the submissions of counsel of the parties, I have to be guided by the provisions of Section 79G of the Civil Procedure Act, which provides as follows:-

“79G. 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 that period anytime 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. Courts have severally dealt with the issue of extension of time to file appeal, and basically the main consideration is that the power of the court to extend time is discretionary and is for the purpose of doing justice to all parties.
9. From the reasons of illness of a relative given herein, in my view that satisfies the requirement for sufficient cause.
10. Further, the judgment in question was delivered on 18th November 2022 and the application was filed on 4th March 2023; and with the grounds of attending to the needs of a sick relative which have not been challenged, I am of the view that the delay was not inordinate.
11. In addition to the above reasons, I see no possibility of the respondent suffering any prejudice, as the applicant has not asked for any other substantive order, but only for leave to appeal out of time.
12. Consequently, and for the above reasons, I allow the application and order that:-
 1. I extend time for the applicant to file appeal. The appeal will be filed within seven (7) days from today.
 2. Costs of the application will follow the determination of the appeal.
 3. I will hereafter fix a mention date to confirm filing of the appeal.

DATED, SIGNED AND DELIVERED THIS 14TH DAY OF MARCH 2024 IN OPEN COURT AT VOI.

GEORGE DULU

JUDGE

In the presence of:-

Alfred/Trizah – Court Assistants

Mr. Mwazighe for applicant

Mr. Mwanyumba for respondent

