



**Njiru v Njiru (Miscellaneous Application E005 of 2024)  
[2024] KEHC 5718 (KLR) (22 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 5718 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT EMBU  
MISCELLANEOUS APPLICATION E005 OF 2024  
LM NJUGUNA, J  
MAY 22, 2024**

**BETWEEN**

**ISAACK NJAGI NJIRU ..... APPLICANT**

**AND**

**MICHAEL NJIRU ..... RESPONDENT**

**RULING**

1. The applicant has filed the notice of motion dated 29<sup>th</sup> January 2024 seeking leave to appeal out of time against the decision of Hon. J. Otieno delivered on 11<sup>th</sup> October 2023 in Embu CMCC No. E173 of 2021. The applicant also sought for an order that costs be in the cause
2. It is the applicant’s case through his advocate that he was the plaintiff in the trial court where the magistrate directed that she would deliver judgment on notice. That she delivered the judgment on 11<sup>th</sup> October 2023 wherein she ordered that the plaintiff’s suit be struck out for want of jurisdiction. That he applied for certified copies of the judgment and proceedings but there was a delay in issuing the same and he was issued with a certificate of delay on 05<sup>th</sup> January 2024. He stated that this is the reason for the delay in appealing and that his appeal has high chances of success.
3. The respondent filed a replying affidavit stating that the dispute between him and the applicant related to rent arrears and a tenancy agreement, which the trial court stated that it should be determined by the Business Premises Rent Tribunal. That the application is a waste of judicial time and it should not be entertained.
4. The issue for determination is whether the court should grant the applicant leave to appeal out of time.
5. The timelines for filing of appeals are set under Section 79G of the *Civil Procedure Act* 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 a good and sufficient cause for not filing the appeal in time.”

6. The court is not an alien to the fact that sometimes delay in filing the appeal may occur and it will be guided by the proviso in the above-cited provision of the *Civil Procedure Act*. The proviso creates a leeway but only to an extent where the court may apply discretion on the matter and grant such orders when it is satisfied of the reasons for the delay and other factors. In the case of *Edith Gichungu Koine Vs Stephen Njagi Thoithi* (2014) eKLR the court held thus:

“Nevertheless, it ought to be guided by consideration of factors stated in many previous decision of this court including, but not limited to, the period of delay, the reasons for the delay, the degree of prejudice to Respondent if the application is granted, and whether the matter raises issues of public importance, amongst others.”

7. On the same day when the impugned judgment was delivered, the applicant wrote to the court to supply him with certified copies of the judgment and proceedings for purposes of appeal. This letter is marked as annexure “NI 1” to the supporting affidavit. A certificate of delay was issued long after expiry of the statutory 30 days to appeal. The applicant has demonstrated his efforts to obtain the certified copies of the judgment and proceedings for appeal purposes. The application has been filed late but the delay is excusable.

8. Therefore, I find that the application has merit and it is hereby allowed. The appeal be filed within 14 days from today. Cost of the application shall abide the outcome of the appeal.

9. It is so ordered.

**DELIVERED, DATED AND SIGNED AT EMBU THIS 22<sup>ND</sup> DAY OF MAY, 2024.**

**L. NJUGUNA**

**JUDGE**

.....for the Applicant

.....for the Respondent

