



**Lucy v Garama (Miscellaneous Application E047 of 2023)  
[2024] KEHC 7770 (KLR) (21 June 2024) (Ruling)**

Neutral citation: [2024] KEHC 7770 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MALINDI  
MISCELLANEOUS APPLICATION E047 OF 2023**

**M THANDE, J  
JUNE 21, 2024**

**BETWEEN**

**CATHERINE BOLO LUCY ..... APPLICANT**

**AND**

**EMMANUEL USHINDI GARAMA ..... RESPONDENT**

**RULING**

1. By an Application date 6.3.23, the Applicant seeks leave to appeal out of time, the judgment delivered on 14.12.22 in Kaloleni pmccc No. E237 of 2021. She further seeks that the draft memorandum of appeal filed herein be deemed as duly filed, upon payment of requisite court fees.
2. The Applicant's case as set out in the Application and the supporting affidavit, is that the judgment was delivered a day before her advocates closed their chambers for the December holidays and reopened on 16.1.23. The Appellant being insured, the instructing client was the insurance company which had similarly closed offices for the December holiday with most staff on leave. By the time these offices were reopened, the 30 day period for filing an appeal had lapsed. The Applicant is dissatisfied with the judgment and intends to appeal against the same. She contends that the Application was filed within reasonable time and that the delay in filing the memorandum of appeal has not been inordinate or wilful. Further that the intended appeal has high chances of success and that the Respondent will not be prejudiced if the leave sought is granted.
3. The Application is opposed by the Respondent vide a replying affidavit sworn on 4.12.23. He contends that the Applicant is guilty of laches. He averred that neither the Applicant nor her advocate attended court on the date the impugned judgment was delivered. Her advocates were however duly served with the notice of entry of judgment on the same date. As such, the issue of closing office does not offer any excuse. Additionally, the insurance company was on 16.1.23 served with a notice to file a declaratory suit. The Applicant's advocates and the insurance company were thus aware of the judgment. The delay in not taking action from 16.1.23 to 5.6.23 is inordinate and has not been explained. The Respondent



asserted that the Application is intended to frustrate him from enjoying the fruit of his litigation. He urged the Court not to aid the Applicant in her indolence.

4. Parties filed their written submissions which I have duly considered together with the authorities cited.
5. The statutory period for filing an appeal in this Court from a subordinate Court is 30 days. This is stipulated in Section 79G of the [Civil Procedure Act](#) which 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.

6. The proviso to Section 79G of the [Act](#) allows a party who gets caught up and is unable to file an appeal within the stipulated period, to seek extension of time. Such party must however satisfy the Court that there is good and sufficient reason for not filing the appeal on time.
7. An order for extension of the time to file an appeal is discretionary. It is an equitable remedy and not a right of a party. In the case of [Nicholas Kiptoo Arap Korir Salat v Independent Electoral and Boundaries Commission & 7 others](#) [2014] eKLR, the Supreme Court listed the following as the underlying principles that a Court should consider in exercise of its discretion in an application for extension of time:
  1. Extension of time is not a right of a party. It is an equitable remedy that is only available to a deserving party at the discretion of the Court;
  2. A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the court
  3. Whether the court should exercise the discretion to extend time, is a consideration to be made on a case to case basis;
  4. Whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the Court;
  5. Whether there will be any prejudice suffered by the respondents if the extension is granted;
  6. Whether the application has been brought without undue delay; and
  7. Whether in certain cases, like election petitions, public interest should be a consideration for extending time.
8. The impugned decision was made on 14.12.22. By dint of Section 79G of the [Civil Procedure Act](#), the appeal ought to have been filed by 14.1.23. It is noted that the Applicant's advocates were served with the notice of entry of judgment on the day it was delivered. Further, the Application though dated 6.3.23, was not filed until 5.6.23 a delay of almost 5 months.
9. The explanation given by the Applicant for the delay is that the offices of her advocate and of the insurance company were closed for the December holiday shortly after the judgment was delivered and reopened in January. What the Applicant has not told the Court is what caused the delay from 16.1.23 when the advocate's office was reopened to 6.3.23 when the Application was dated, or indeed why the Application was not filed until 3 months later on 5.6.23.



10. Applying the principles set out in the *Nicholas Kiptoo Arap Korir Salat case* (*supra*), the Court finds that the Application and draft memorandum of appeal were filed about 5 months after the last date the appeal ought to have been filed, which period constitutes inordinate delay. The Applicant has not discharged the burden of laying a basis for the grant of the leave sought or proffered a reasonable reason for the delay to the satisfaction of the Court.
11. In light of the foregoing, the Court finds that the Applicant is not deserving of the exercise of its discretion in her favour. Accordingly, the Application dated 6.3.23 is unmerited and is hereby dismissed with costs to the Respondent.

**DATED, SIGNED AND DELIVERED VIA MS TEAMS THIS 21<sup>ST</sup> DAY OF JUNE 2024.**

**M. THANDE**

**JUDGE**

