



Weaver Bird Garment Manufacturers Ltd v Muthoni & another (Environment and Land Miscellaneous Application E279 of 2024) [2025] KEELC 4548 (KLR) (18 June 2025) (Ruling)

Neutral citation: [2025] KEELC 4548 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E279 OF 2024**

CG MBOGO, J

JUNE 18, 2025

BETWEEN

WEAVER BIRD GARMENT MANUFACTURERS LTD APPLICANT

AND

ROSE MUTHONI 1ST RESPONDENT

CORNERSTONE REAL ESTATE LIMITED 2ND RESPONDENT

RULING

1. Before me is the notice of motion dated 8th January, 2025 filed by the applicant herein, and it is expressed to be brought under Order 51 Rule 1 of the [Civil Procedure Rules](#) and Articles 162 (2)(b) and 165 (6) of the [Constitution of Kenya](#) seeking the following orders: -
 - a. Spent.
 - b. That the applicant herein be granted leave to appeal out of time against the judgment dated 12/11/2021 in Milimani Small Claims Court, Commercial Claim No. SCCCOMM/479 of 2021.
 - c. That pending hearing and determination of this application and the intended appeal, this honourable court be pleased to order a stay of execution in the Milimani Small Claims Court, Commercial Claim No. SCCCOMM/479 of 2021.
 - d. Spent.
 - e. That the costs of this application be provided for.
2. The application is premised on the grounds inter alia that the applicant was served with the pleadings in SCCCOMM/ 479 of 2021 through whatsapp message to one of its directors, but the same did not have a claim number, and thus it was difficult to respond to the claim or follow up on the same.



3. The application is supported by the affidavit of David Mugao Mwitari, one of the directors of the applicant which is sworn on even date. The applicant deposed that one of its directors happened to have heard of a pending execution of a judgment from a case filed by the 1st respondent. Further, that they instructed the firm of Dola Magani & Co. Advocates to enquire on the matter which they learnt that judgment was entered on 21st August, 2021 and a decree issued on 12th November, 2021.
4. The applicant deposed that the delay in filing the appeal was not intentional as they only came to know about the same almost three years later. Further, that the applicant is aggrieved by the judgment of the small claims court delivered on 21st August 2021, and seeks the leave of this court to appeal out of time. The applicant further deposed that the small claims court lacked jurisdiction because the claim was by a tenant against a landlord based on a tenancy relationship within the scope of [Cap 301](#). Further, that the delay was occasioned by the filing of a similar application before the High Court which pronounced itself in a ruling delivered on 11th December, 2024.
5. The application was further supported by the supplementary affidavit of Gerald Andego Magani sworn on 10th March, 2025. The learned counsel reiterated the averments raised in the supporting affidavit of the applicant, and there would be no need to rehash.
6. The replying affidavit by Mshindi Elijah, the learned counsel for the 1st respondent sworn on 23rd January, 2025 seems to be in response to the affidavit sworn on 20th September, 2024. There is no reference to the instant application and thus it appears that this application is undefended. Equally so, the replying affidavit seems to have preceded the notice of appointment filed by the firm of Kinuthia Wandaka & Co. Advocates dated 27th January, 2025. The 1st respondent's participation in this application is marred with confusion, and one cannot discern her actual response. The same error runs through the written submissions dated 10th June 2025, as can be seen in paragraph 2. I will not consider these submissions in the circumstance.
7. The application was canvassed by way of written submissions. The applicant filed its written submissions dated 10th March, 2025, where it raised two issues for determination as follows: -
 - i. Should leave to appeal out of time be granted.
 - ii. Should stay of execution in Milimani SCCCOMM/479 of 2021 be granted pending the hearing of the intended appeal.
8. On the first issue, the applicant submitted that it first became aware of the matter at the execution stage three years post judgment when they made enquiries, and that the delay was not intentional. To buttress on this issue, the applicant relied on the cases of [Saitabau v Republic](#) [2025] KECA 384 (KLR) and [Salat v Independent Electoral and Boundaries Commission & 7 others](#) [2014] KESC 12 (KLR).
9. On the second issue, the applicant submitted that the application was made without unreasonable delay as explained and further, that it is apprehensive that the 1st respondent may proceed with the execution. The applicant submitted that it stands to suffer irreparable loss if the execution continues. Further, that it is willing and ready to deposit any security to this court, and in light of that it has satisfied the requirements under Order 42 Rule 6 of the [Civil Procedure Rules](#).
10. I have considered the application, and the written submissions filed by the applicant herein. The issue for determination is whether the application has merit. As stated in paragraph 6 above, the pleadings filed by the 1st respondent are not in consonance with this application. It appears that the application is unopposed as it is. However, this court has to satisfy itself whether the applicant has made a claim that would enable this court exercise its discretion.



11. Section 79G of the *Civil Procedure Act* provides that appeals originating from the subordinate court should be filed within thirty (30) days from the date of the decree or order appealed against. Section 95 of the said Act gives the court discretion to extend the time as it deems fit even if the time originally fixed has expired.

12. Section 79G of the *Civil Procedure Act* provides 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 good and sufficient cause for not filing the appeal in time.”

13. Section 95 of the *Civil Procedure Act* provides thus: -

“Where any period is fixed or granted by the court for the doing of any act prescribed or allowed by this Act, the court may, in its discretion, from time to time, enlarge such period, even though the period originally fixed or granted may have expired.”

14. The principles governing leave to appeal out of time are settled. The successful applicant must demonstrate “good and sufficient cause” for not filing the appeal in time. In *Thuita Mwangi versus Kenya Airways* [2003] eKLR, the Court of Appeal while considering Rule 4 of the *Court of Appeal Rules* which is similar to Section 79G of the *Civil Procedure Act*, reiterated its decision in *Mutiso v Mwangi* [1997] KLR 630 as follows:

“It is now well settled that the decision whether or not to extend the time for appealing is essentially discretionary. It is also well settled that generally the matters which this court takes into account in deciding whether to grant an extension of time are; first, the length of delay; secondly, the reason for the delay; thirdly (possibly) the chances of appeal succeeding if the application is granted; and fourthly, the degree of prejudice to the Respondent of the application is granted.”

15. Also, the Supreme Court in the case of *Nicholas Kiptoo Korir Arap Salat versus IEBC & 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 include;

1. 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;
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 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 Respondent if the extension is granted;
 6. Whether the application has been brought without undue delay.
 7.”
16. The circumstances leading to the filing of this application before this court are noted. In particular, the time taken to file the application before the high court and the orders granted. In applying the above principles to the circumstances of this case, the applicant needed to give a reasonable explanation for the delay in bringing forth the appeal. On its own admission, the applicant deposed that one of its directors was served with the pleadings emanating from the Small Claims Court on 15th August, 2021. The said service was effected via whatsapp message and since there was no case number, it was difficult for the applicant to follow up on the same. It was only when one of the applicant’s directors heard of an impending execution that they have come to court. The reasons advanced by the applicant in this case are not satisfactory to enable this court exercise its discretion. By its own admission, it was incumbent upon the applicant to make a follow up. Perhaps a phone call or even an actual visit to the court registry would suffice. It appears that none of these was done, and instead, the applicant went to slumber. The court cannot come to the aid of an indolent party who is ignorant of the law.
17. From the above, the applicant has not given sufficient cause to warrant this court to grant leave to appeal out of time. It would thus be unnecessary to determine whether the grounds of the appeal are arguable.
18. The notice of motion dated 8th January, 2025 lacks merit, and it is hereby dismissed. I make no orders as to costs.

Orders accordingly.

DATED, SIGNED & DELIVERED VIRTUALLY THIS 18TH DAY OF JUNE, 2025.

HON. MBOGO C.G.

JUDGE

18/06/2025.

In the presence of:

Mr. Benson Agunga - Court assistant

Mr. Mshindi holding brief for Mr. Wandaka for the 2nd Respondent

No appearance for the Applicant

