



**Well Run Autospares & Accessories Limited v Soinkei & another (Miscellaneous Civil Application E220 of 2025) [2025] KEHC 14963 (KLR) (16 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 14963 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MOMBASA  
MISCELLANEOUS CIVIL APPLICATION E220 OF 2025**

**G MUTAI, J**

**OCTOBER 16, 2025**

**BETWEEN**

**WELL RUN AUTOSPARES & ACCESSORIES LIMITED ..... APPLICANT**

**AND**

**SAINKO ENE SOINKEI ..... 1<sup>ST</sup> RESPONDENT**

**POLO AUTO FREIGHT FORWARDERS LIMITED ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. The application before me is dated 3<sup>rd</sup> July 2025. It is brought under the provisions of Order 51 (1) of the Civil Procedure Rules, Sections 1A, 1B, 3A, and 79G of the *Civil Procedure Act*, and Articles 40, 50, and 159 of *the Constitution* of Kenya, 2010. What the applicant, Well Run Autospares & Accessories Ltd, seeks is to be allowed to file an appeal out of time, on the grounds that it didn't meet the timelines set out in the rules of court due to mistakes, deliberate or otherwise, on the part of its then counsel. It was averred that the applicant filed, in person, an appeal, to wit, HCCA No E222 of 2024, which was struck out for having been filed out of time and without the leave of the court.
2. The application was opposed by the 1<sup>st</sup> respondent. Ms Sainko ene Soinkei filed a replying affidavit, she swore on 14th July 2025, in which she deposed that the application had no merit and should be dismissed on the ground that the delay in filing the application for extension of time had not been satisfactorily explained and that the delay was inordinate.
3. It would appear to me that the sole issue in this matter is whether this Court should allow the applicant to file an appeal out of time.
4. I have considered the application dated 3<sup>rd</sup> July 2025, the response thereto, and the submissions of the parties. The issues, as I see them, are whether this Court should enlarge the time for filing the appeal and who should bear the costs of the application.



5. Section 79G of the *Civil Procedure Act* provides that an appeal from the subordinate Court to the High Court shall be filed within 30 days of the date of the decree or order appealed against. The High Court is, however, given unlimited discretion to admit an appeal out of time or to grant leave to a party aggrieved by a decision of the court below to file an appeal out of time if it is satisfied that there was a good and sufficient cause for not filing the appeal in time.
6. In the case of *Edith Gichunge Koine v Stephen Njagi Thoithi* [2014]eKLR, it was held that:-

“Nevertheless, it ought to be guided by consideration of factors stated in many previous decisions of this Court, including, but not limited to, the period of delay, the reasons for the delay, the degree of prejudice to the Respondent if the application is granted, and whether the matter raises issues of public importance.”
7. A similar holding was made by the Court of Appeal in the case of *Thuita Mwangi v Kenya Airways Ltd* [2003] KECA 201 (KLR), where it was stated as follows:-

“For instance, in *Leo Sila Mutiso v Rose Hellen Wangari Mwangi*, (Civil Application No Nai 255 of 1997) (unreported), the Court expressed itself thus:

“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 in general the matters which this court takes into account in deciding whether to grant an extension of time are: first, the length of the delay: secondly, the reason for the delay: thirdly (possibly), the chances of the appeal succeeding if the application is granted: and, fourthly, the degree of prejudice to the respondent if the application is granted.
8. In the case of *Salat v Independent Electoral and Boundaries Commission & 7 others* [2014] KESC 12 (KLR), the Supreme Court settled the appropriate test to be applied by a Court considering an application for extension of time as being:-

“This being the first case in which this court is called upon to consider the principles for extension of time, we derive the following as the underlying principles that a court should consider in exercise of such discretion:

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; A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the court. Whether the court should exercise the discretion to extend time, is a consideration to be made on a case to case basis; Whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the court; Whether there will be any prejudice suffered by the respondents if the extension is granted; Whether the application has been brought without undue delay; and whether, in certain cases, like election petitions, public interest should be a consideration for extending time.”
9. The applicant was represented by counsel in the proceedings before the court below. Upon delivery of the judgment, the firm of Mburu Nyambuye & Co. Advocates sought typed proceedings and judgment. The applicant, on its own, later filed an appeal out of time, without leave of the court, which was struck out. It is therefore the case that the applicant and its advocates were aware of the judgment and made every effort to lodge the appeal, which, however, was unsuccessful.



10. In my view, the applicant has been keen to prosecute an appeal against the impugned decision. If this court dismisses the application, the applicant won't have a chance to challenge the impugned decision. It is therefore in the interest of justice to allow the application.
11. The upshot of the foregoing is that the application dated 3<sup>rd</sup> July 2025 is hereby allowed on condition that the applicant files an appeal within 14 days of the date hereof.
12. On costs, I award the 1<sup>st</sup> respondent the costs of the application.
13. It is so ordered.

**DATED AND SIGNED AT MOMBASA, THE 16<sup>TH</sup> DAY OF OCTOBER 2025. DELIVERED VIRTUALLY THROUGH MICROSOFT TEAMS.**

**GREGORY MUTAI**

**JUDGE.**

In the presence of:-

Ms Matoke, for the Applicant;

Ms Juma, for the 1<sup>st</sup> Respondent;

No appearance for the 2<sup>nd</sup> Respondent;

Arthur – Court Assistant.

