



**Wambui v Njoroge (Miscellaneous Civil Application E020 of 2025)  
[2025] KEHC 17050 (KLR) (13 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 17050 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT THIKA  
MISCELLANEOUS CIVIL APPLICATION E020 OF 2025  
FN MUCHEMI, J  
NOVEMBER 13, 2025**

**BETWEEN**

**FLAVIAN WANGUI WAMBUI ..... APPLICANT**

**AND**

**MICHAEL NDUNGU NJOROGE ..... RESPONDENT**

**RULING**

1. The application dated 31<sup>st</sup> January 2025 seeks for orders of leave to file an appeal out of time against the judgment in Thika Small Claims Court SCCC No. E468 of 2024 delivered on 31<sup>st</sup> October 2024.
2. The respondent opposed the application and filed a Replying Affidavit dated 9<sup>th</sup> June 2025.

**Applicant's Case**

3. The applicant states that judgment in Thika SCCC No. E468 of 2024 was delivered on 31<sup>st</sup> October 2024. Being aggrieved with the said judgment, the applicant is desirous to lodge an appeal against the said judgment but the statutory period within which to file an appeal already lapsed. The applicant attributes her failure to file the appeal on time on financial constraints. Further, the applicant argues having acted in person she was not aware of the statutory limits in which to file an appeal. The applicant avers that the delay occasioned is not so inordinate as to be inexcusable.

**The Respondent's Case**

4. The respondent states that judgment in the trial court was delivered on 31<sup>st</sup> October 2024 in favour of the applicant as against him however the applicant went mute and did not pursue the execution of the judgment. The respondent argues that the present application is an afterthought as the applicant has taken over two months to file the same and thus equity aids the vigilant and not the indolent. Furthermore, the application is an abuse of the court process as the applicant argues that she lacked the requisite fees to file the appeal which is approximately Kshs. 1,000-.



5. Parties put in submissions.

### **The Applicant's Submissions.**

6. The applicant relies on the cases of Leo Sila Mutiso vs Rose Hellen Wangari Mwangi (Civil Application No. 255 of 1977) (unreported) and Thuita Mwangi vs Kenya Airways Ltd [2003] KLR; Telkom Kenya Limited vs John & 996 Others [2015] eKLR and submits that the reason for her delay in filing the appeal was due to the fact that she was acting in person and she was not aware of the strict timelines governing filing of appeals. Further, the applicant argues that she was undergoing financial hardships and was unable to file the appeal within the prescribed period. The applicant argues that the delay was neither deliberate nor negligent and further the delay is not so excessive as to be deemed inexcusable.
7. Relying on the decision in Dennis Mogambi Mang'are vs Attorney General & 3 Others [2012] KECA 251, the applicant argues that the intended appeal has strong chances of success based on the substantive and procedural merits of the case.
8. The applicant submits that she will suffer significant and irreparable prejudice if the orders sought are not granted which would render the appeal moot and deny her an opportunity to seek justice through the appellate process.
9. The applicant argues that the respondent shall not suffer any prejudice, harm or injustice in the event the application is allowed. Furthermore, the applicant submits that she does not seek to delay the enjoyment of the respondent's judgment. She argues that the parties interests must be balanced.

### **The Respondent's Submissions**

10. The respondent refers to Section 79G of the *Civil Procedure Act* and the cases of Diplack Kenya Limited vs William Muthama Kitonyi [2018] eKLR; Nicholas Kiptoo Korir arap Salat vs IEBC & 7 Others [2014] eKLR and Paul Musili Wambua vs Attorney General & 2 Others [2015] eKLR and submits that the applicant has not satisfied the court that she has good and sufficient cause for filing an appeal out of time. The respondent argues that the applicant has attributed the delay in filing her appeal to financial constraints but she has failed to give any particulars of her financial constraints. That notwithstanding the respondent argues that it is trite law that financial constraints is not a valid reason for delay in filing an appeal. To support his contentions, the respondent relies on the cases of George Mwenda Muthuri vs Mama Day Nursery & Primary School Nyeri CA No. Nyr No. 4 of 2014 (UR214) and Willis Oneko Opiata vs Fredric Omondi Wera [2021] eKLR.
11. The respondent submits that the judgment in the trial court was delivered on 31<sup>st</sup> October 2024 and the present application was filed on 31<sup>st</sup> January 2025 which is three months between the judgment and the time taken to file the present application hence the delay the inordinate and has not been satisfactorily explained.

### **The Law**

#### **Whether the court should exercise its discretion to grant the applicant leave to file his appeal out of time;**

12. Section 79G of the *Civil Procedure Act* states:-

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 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. It is clear from the wording of section 79G of the *Civil Procedure Act* that before the court considers extension of time, the applicant must satisfy the court that that he has good and sufficient cause for filing the appeal out of time. This principle was enunciated in the case of *Diplack Kenya Limited vs William Muthama Kitonyi* [2018]eKLR an applicant seeking enlargement of time to file an appeal or admission of an already filed appeal must show that he has a good cause for doing so.

14. The Supreme Court in the case of *Nicholas Kiptoo Korir arap Salat vs IEBC and 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 should include:-

- a. 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;
- b. A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the court;
- c. Whether the court should exercise the discretion to extend time, is a consideration to be made on a case by case basis;
- d. Whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the court;
- e. Whether there will be any prejudice suffered by the respondent if the extension is granted;
- f. Whether the application has been brought without undue delay.

15. Similarly in the case of *Paul Musili Wambua vs Attorney General & 2 Others* [2015]eKLR, the Court of Appeal in considering an application for extension of time and leave to file the Notice of Appeal out of time stated the following:-

“.....it is now settled by a long line of authorities by this court that the decision of whether or not to extend the time for filing an appeal the Judge exercises unfettered discretion. However, in the exercise of such discretion, the court must act upon reason(s) not based on whim or caprice. In general the matters which a court takes into account in deciding whether or not to grant an extension of time are; the length of delay, the reason for the delay, the chances of the appeal succeeding if the application is granted, the degree of prejudice to the respondent if the application is granted.”

16. Applying the above principles to the present case, the judgment herein was delivered on 31<sup>st</sup> October 2024 and the applicant filed the current application on 31<sup>st</sup> January 2025. This is about two months outside the time limited for filing an appeal. The applicant has attributed the delay in filing her appeal to financial constraints. The applicant did not give any details to her financial constraints neither did she provide any proof of the same. It is trite law that financial constraints is not a valid reason for delay



in filing an appeal. In the case of George Mwenda Muthuri vs Mama Day Nursery and Primary School Nyeri CA No. Nyr No. 4 of 2014 (UR214) a request for leave to extend time was declined because of inability to raise legal fees was not per se a reason. Similarly in Willis Oneko Opiata vs Fredric Omondi Wera [2021] eKLR where the Court of Appeal dismissed an application for stay pending appeal where the applicant attributed the cause of delay to financial constraints. The court stated:- “There was also mention of financial constraints whose details or proof were not also given. Finances were allegedly intended to hire an advocate to represent him in the intended appellate process. No mention was made as to why no attempts were made by him to initiate the appellate process in person in the manner the application under consideration was initiated.”

17. Bearing in mind that a period two (2) months cannot be termed as an inordinate delay, I cannot lose sight of the fact that the reasons for the delay have not been satisfactorily explained. Financial constraints is not a good reason for delay as was held in the foregoing authorities. Furthermore the filing fees for a Memorandum of Appeal is minimal. The applicant still had the right to apply to sue or appeal as a pauper. In my view, the applicant has not given any plausible reasons for the delay in filing the appeal.
18. The applicant has not attached the intended Memorandum of Appeal or the judgment of the trial court for the court to assess whether the grounds of appeal are arguable or not, whether the appeal has any chances of success or not. As such, I find the applicant has not convinced this court that she deserves orders of extension of time to file her appeal.
19. Accordingly, the application dated 31<sup>st</sup> January 2025 lacks merit and is hereby dismissed with costs to the respondent.
20. It is hereby so ordered.

**RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT THIKA THIS 13<sup>TH</sup> DAY OF NOVEMBER 2025.**

**F. MUCHEMI**

**JUDGE**

