



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KERUGOYA
HCCOMM MISC NO E001 OF 2025

DICKSON GICHIRA KARANI PLAINTIFF/APPLICANT
VERSUS
ANDREW MWANGI.....1ST RESPONDENT
MONARCH INSURANCE CO. LTD.....2ND RESPONDENT

RULING

[1] The applicant filed a Notice of Motion dated 23rd April, 2025 seeking the following orders:

1. Spent.
2. That the honourable court be pleased to grant leave to the applicant to file their appeal out of time.
3. The costs of this application be in the cause.

[2] The application is based on the grounds on the face of the application and the supporting affidavit of Dickson Gichira. The applicant's case is that he obtained judgement and consequently a decree against the 1st respondent in a personal injury claim at WANG'URU PMCC NO. 149 OF 2017. Consequently, the 1st respondent lodged a declaratory suit against his insurer, the 2nd respondent at WANG'URU PMCC NO. E161 OF 2023 and obtained judgement on 18th February, 2025.

[3] Further, the applicant avers that he had not received the signed decree in WANG'URU PMCC NO. E161 OF 2023 until recently, when he read it and was dissatisfied with the Order no. (c) of the decree. He seeks leave to appeal out of time against the said Order no. (c) of the judgement and decree issued in WANG'URU PMCC NO. E161 OF 2023,

which restrained him from executing against the 1st respondent herein. He has a good appeal with triable issues.

- [4] Lastly, he avers that unless the orders sought herein are granted, the realization of the judgement and decree obtained in WANG'URU PMCC NO. 149 OF 2017 will be defeated and he will suffer injustice.
- [5] The 1st respondent deposed to a Replying Affidavit and avers that the 2nd respondent was ordered to satisfy the decretal sum vide a decree of Wanguru Magistrates Court Civil Case No. E161 of 2023 (hereinafter the "Declaratory Suit"). The said Declaratory suit was concluded on the 18th February, 2025. The Applicant has now commenced execution proceedings against the 2nd Respondent, and has actually sought for warrants of execution in the declaratory suit.
- [6] The 1st respondent avers that the applicant cannot seek to execute the Decree in the Secondary Suit and at the same time seek to Appeal against it.
- [7] Lastly, the Applicant has not explained the delay in filing his Appeal, and therefore has been indolent, thus the orders sought herein being equitable in nature cannot issue in favour of an indolent litigant.

Applicant submissions

- [8] The applicant submits that the said Order no. (c) contradicts with the proviso to Section 5(b) (iv) of the Insurance (Motor Vehicle Third Party Risks) Act, Cap 405 Laws of Kenya in that, it shielded the 1st respondent from paying the applicant the full decretal amount as was held in WANG'URU PMCC NO. 149 OF 2017. The applicant should have liberty to pursue the 1st respondent in case the 2nd respondent does not settle the full decretal amount, so that the realization of the judgement and decree issued in WANG'URU PMCC NO. 149 OF 2017 will not be defeated. It will create no prejudice on the 1st respondent however it will hurt the applicant if the decree is not realized in full.
- [9] The applicant submits that the delay to lodge an appeal that was occasioned before the applicant approached the court on 23rd April, 2025 for leave was a slight delay, considering judgement was read on 18th February, 2025 and the parties reserve a right of appeal within 30 days from the delivery. The delay of about 35 days was not an inordinate delay and for the applicant to persuade the court to enlarge time for him to lodge his appeal, he has demonstrated the possibility of the appeal succeeding on merit.

Issue

[10] Whether the honourable court be pleased to grant leave to the applicant to file their appeal out of time.

Analysis

[11] The power to extend time for filing an appeal is granted under Section 79G of the Civil Procedure Act, which provides that an appeal must be filed within 30 days, **“provided that the court may, for good cause, admit an appeal out of time.”**

[12] The principles governing extension of time were enunciated in *Nicholas Kiptoo Arap Korir Salat v IEBC & 7 others* [2014] eKLR, where the Supreme Court set out the guiding considerations:

- i. **Extension of time is discretionary.**
- ii. **The Applicant must explain the delay.**
- iii. **The delay must not be inordinate.**
- iv. **The Court must consider prejudice to the other party.**
- v. **The application should be brought without undue delay.**
- vi. **Public interest may be considered where relevant.**

Length and explanation of delay

[13] The Judgment was delivered on 18th February 2025. The Applicant filed the instant motion on 23rd April 2025—approximately 35 days late.

[14] The delay of slightly over one month is not inordinate by itself. The Applicant explains that he did not receive a signed decree until recently, and only upon reading it did he become aware of Order (c) which aggrieved him.

[15] In the circumstances, the explanation is reasonable and the delay not excessive.

Whether the appeal is arguable

[16] The Applicant intends to appeal against Order (c) of the decree, arguing that it contradicts Section 5(b)(iv) of the Insurance (Motor Vehicle Third Party Risks) Act by restraining execution against the insured.

[17] This raises a triable and arguable point of law, particularly concerning the scope of indemnity vis-à-vis recovery against an insured where an insurer fails to satisfy a decree. The Court need not determine the merit of the case at this stage, and an arguable case need not be one that eventually succeeds at the hearing.

Whether the application was made without undue delay

[18] Once the Applicant obtained the decree, he filed the application within a reasonable period. There is no evidence of indolence or bad faith.

ORDERS

[19] Accordingly, for the reasons set out above, the Court finds merit in the application dated and it is allowed upon the following terms:

1. Leave to appeal out of time is granted.
2. Appellant to file Memorandum of Appeal within fourteen (14) days.
3. Record of Appeal to be filed within sixty (60) days.
4. Directions as to the hearing of the Appeal on 16/2/2026.

[20] Costs in the Appeal.

Order accordingly.

DATED AND DELIVERED THIS 28TH DAY OF NOVEMBER 2025.

EDWARD M. MURIITHI

JUDGE

APPEARANCES:

Mr. Mwangi for Mr. Kagio for the Appellant.

Mr. Kalamu Ndolo for the Respondent.