

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT EMBU
(CORAM: R. MWONGO, J.)

MISCELLANEAOUS CIVIL CASE NO. E017 OF 2025

JENNIFER KAARI NJIRU.....
APPLICANT

-VERSUS-

SYLVANUS WAWERU NDWIGAH.....RESPONDENT

RULING

The Application

1. By this application dated 21st February 2025, the applicant seeks the following orders:
 - 1) That leave be granted to the applicant to file her appeal from the judgment/ruling delivered on 01st August 2024 in Embu MCCC No. 221 of 2017; and
 - 2) That the costs of this application be in the cause.
2. The application is supported by the grounds set out on its face and in the supporting affidavit thereof. The applicant states that the judgment of the trial court caused her mental anguish forcing her to take some time off to calm her mind. That her health has deteriorated since the judgment of the trial court was delivered and she suffers from diabetes. She stated that she was evicted from her matrimonial home and she does menial jobs to sustain herself. That she is financially unstable thus she was unable to file the appeal within time. She stated that the intended appeal has high chances of success.

Response

3. The respondent deposed that the applicant has not demonstrated sufficient cause for extension of time to appeal in light of section 79G of the Civil Procedure Act. That if the applicant was sick, she should have produced medical evidence of her ill

health but none has been provided. He supported the findings of the trial court since there was no marriage found between him and the applicant.

Parties' Submissions

4. The applicant relied on the cases of **Paul Musili Wambua v Attorney General & 2 others [2015] KEHC 6936 (KLR)** and **Seven L. General Trading Ltd & another v Karau [2024] KEHC 3979 (KLR)**. She argued that the intended appeal has high chances of success; that it was not filed within time for good cause which is that she was at the time facing financial hardship and poor health.
5. The respondent relied on the cases of **Nicholas Kiptoo Arap Korir Salat v Independent Electoral and Boundaries Commission & 7 others [2014] KECA 782 (KLR)**, **Ivita v Kyumbu [1975] KEHC 4 (KLR)** and **Cecilia Karuru Ngayu v Barclays Bank of Kenya & another [2016] KEHC 7064 (KLR)**. He argued that without availing financial statements, it cannot be proved that the applicant has financial hardships that barred her from appealing within time. That the applicant has also failed to provide medical records to prove her ill health. He contended that from the draft memorandum of appeal, it did not appear that the appeal had high chances of success. To this end, there is no reason why the court should grant her leave to appeal out of time. He prayed that the application be dismissed with costs.

Issue for Determination

6. The issue for determination is whether the applicant should be granted leave to appeal out of time.

Analysis and Determination

7. The timelines for filing of appeals are set under Section 79G of the Civil Procedure Act 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 a good and sufficient cause for not filing the appeal in time.

8. The law acknowledges that sometimes delay in filing the appeal may occur. That is the reason for the proviso in the above-cited provision of the Civil Procedure Act. The proviso creates lee-way for admission out of time but only to an extent where the court may apply discretion on the matter and grant such orders when it is satisfied as to the reasons for the delay and other factors. In the case of **Edith Gichungu Koine v Stephen Njagi Thoithi & another [2015] KECA 874 (KLR)** the court held thus:

“Nevertheless, it [the court] 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 Respondent if the application is granted, and whether the matter raises issues of public importance, amongst others.”

9. Both being discretionary reliefs, the circumstances of the case should guide the court in making its decision. The applicant stated that since the reading of the trial court’s judgment, she had been suffering due to ill mental and physical health. That she has also been having financial constraints hence she could not appeal within time. The respondent challenged the applicant’s arguments on grounds that there was no proof of these allegations.
10. It is true that there is no proof of the allegations of illness made by the applicant. Nevertheless, from a perusal of the draft memorandum of appeal, substantial triable issues have been raised. These issues should be given a chance to be ventilated on appeal.

Disposition

11. I am persuaded that the application has merit and is hereby allowed. Accordingly, the applicant is ordered to file memorandum of appeal within 14 days of the date hereof failing which the appeal shall stand dismissed.
12. In addition, the appellant shall deposit Kshs.50,000/- into court within 14 days of the date hereof to secure the filing of the appeal failing which the appeal shall also stand dismissed.
13. Orders accordingly.

Delivered electronically, dated and signed at Embu High Court this 3RD DAY OF DECEMBER, 2025, pursuant to notices issued on 24th and 26th November 2025, as to electronic delivery.

**R. MWONGO
JUDGE**