



REPUBLIC OF KENYA



KENYA LAW
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**Kavisu v Muchai (Environment and Land Appeal E053 of 2024)
[2025] KEELC 8587 (KLR) (4 December 2025) (Ruling)**

Neutral citation: [2025] KEELC 8587 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT AND LAND APPEAL E053 OF 2024**

**MD MWANGI, J
DECEMBER 4, 2025**

BETWEEN

JACKSON KASAMU KAVISU APPELLANT

AND

LUCY WANJIRU MUCHAI RESPONDENT

RULING

(In respect of the Appellant's Notice of Motion application dated 3rd September 2016 seeking leave to file an appeal out of time)

Introduction

1. This is a ruling in respect of the Notice of Motion dated 3rd September 2025 brought by the Appellant/Applicant, Jackson Kasamu Kavisu, under Article 47 and 159(2) of *the Constitution* of Kenya, Sections 1A, 1B, 3A and 63(e) of the *Civil Procedure Act*, Order 42 Rule 6, Order 51 Rule 1 of the Civil Procedure Rules, Sections 3 and 10 of the *Judicature Act*, Rule 1 and 3 of the Vacation Rules.
2. The application seeks several substantive and interlocutory orders, principally: leave to lodge an appeal out of time against the ruling delivered on 1st April 2025 in Kajiado ELC No. 50 of 2015, Lucy Wanjiru Muchai v Jackson Kasamu Kavisu; stay of execution of the Notice to Show Cause issued against the Appellant on 16th July 2025; and that the draft Record of Appeal annexed be deemed duly filed upon payment of requisite fees. The Appellant also prays that pending the hearing and final determination of the appeal, this Court sets aside the ruling delivered on 1st April 2025 and grants unconditional leave to the applicant to defend the suit in the lower court.
3. The application is supported by the grounds on its face and the Supporting Affidavit sworn by the Appellant on 3rd September 2025, wherein he avers, inter alia, that the main suit in the lower court proceeded ex parte and judgment was entered against him; that his request for leave to amend his



- defence and participate in the proceedings was dismissed; and that he was thereafter prevented from lodging the intended appeal within time owing to illness and delay in the typing of court proceedings.
4. He further contends that the amended Plaintiff filed by the Respondent introduced discrepancies in the claim amount, necessitating an opportunity to contest the figures and have accounts taken. The Appellant maintains that unless the orders sought are granted, he stands to suffer substantial loss as execution is imminent.
 5. The application is opposed through a Replying Affidavit sworn on 26th September 2025 by Lucy Wanjiru Muchai, the Respondent herein. She avers that she entered into a sale agreement with the Applicant in 2012 for the purchase of land parcel L.R No. Kajiado/Kaputiei-North/7911 at a consideration of Kshs. 3,000,000/=, which she fully paid. However, the sale collapsed, compelling her to seek a refund. She states that the Applicant only refunded her Kshs. 900,000/= leaving a balance of Kshs. 2,100,000/=, prompting her to institute Kajiado CMCC No. 50 of 2015, in which judgment was delivered on 4th June 2019 in her favour for Kshs. 2,874,097.50/= inclusive of interest and costs.
 6. She deposes that the Applicant has persistently failed to honour the decree, necessitating the issuance of a Notice to Show Cause to enforce payment. Instead of settling the judgment or responding appropriately to execution, the Applicant filed an application dated 28th October 2024 seeking to reopen the matter, set aside judgment, and amend his defence — which application was dismissed by the lower court in its ruling of 1st April 2025.
 7. She deposes that the Applicant has persistently failed to honour the decree, necessitating the issuance of a Notice to Show Cause to enforce payment. Instead of settling the judgment or responding appropriately to execution, the Applicant filed an application dated 28th October 2024 seeking to reopen the matter, set aside judgment, and amend his defence — which application was dismissed by the lower court in its ruling of 1st April 2025.
 8. The Respondent further argues that the intended appeal raises no arguable grounds, as the lower court considered all issues raised, including amendment of pleadings, participation of counsel, and alleged additional payments. The Applicant fully participated in the trial and cannot claim to have been condemned unheard. There is no prejudice that will be suffered by the Applicant if execution proceeds, whereas the Respondent continues to suffer due to prolonged non-payment. The Respondent asserts that the application is incompetent as the ruling of 1st April 2025 was a negative order incapable of execution, and thus no stay lies against it.
 9. The Respondent therefore urges the Court to dismiss the application with costs, terming it frivolous, vexatious, and an abuse of the Court process.

Directions

10. The court directed that the application be canvassed by way of written submissions. Both parties complied filing their respective submissions. The submissions have been duly considered in the writing of this ruling.

Analysis and Determination

11. Having carefully considered the application and pleadings before me, this court finds that the main issue that arises for determination is whether the Applicant has met the threshold for grant of leave to appeal out of time against the ruling delivered on 1st April 2025.
12. The starting point must be Section 79G of the *Civil Procedure Act*, which stipulates that an appeal filed out of time may nonetheless be admitted if “the appellant satisfies the court that he had good and



sufficient cause for not filing the appeal in time.” It therefore follows that the burden squarely rests upon the Applicant to establish good and sufficient cause for the delay.

13. In determining whether the Applicant has discharged the burden imposed under Section 79G of the *Civil Procedure Act*, I am guided by the pronouncement by Odunga J (as he then was) in *Mbukoni Services Limited & Another v Mutinda Reuben Nzili & Others* (suing as the Legal Representatives of the Estate of Florence Ndinda Mutinda – Deceased) (Misc. Application No. 77 of 2021), where the learned Judge emphasized — and I quote verbatim:

“It is clear therefore that the decision whether or not to grant leave to appeal out of time or to admit an appeal out of time is an exercise of discretion and just like any other exercise of discretion. This being an exercise of judicial discretion, like any other judicial discretion must be on fixed principles and not on private opinions, sentiments and sympathy or benevolence but deservedly and not arbitrarily, whimsically or capriciously. The Court’s discretion being judicial must therefore be exercised on the basis of evidence and sound legal principles, with the burden of disclosing the material falling squarely on the supplicant for such orders. One of those judicial principles expressly provided for in the above provision is that the applicant must satisfy the Court that he has a good cause for doing so, since as was held in *Feroz Begum Qureshi and Another vs. Maganbhai Patel and Others* [1964] EA 633, there is no difference between the words “sufficient cause” and “good cause”. It was therefore held in *Daphne Parry vs. Murray Alexander Carson* [1963] EA 546 that though the provision for extension of time requiring “sufficient reason” should receive a liberal construction, so as to advance substantial justice, when no negligence, nor inaction, nor want of bona fides, is imputed to the appellant, its interpretation must be in accordance with judicial principles. If the appellant had a good case on the merits but is out of time and has no valid excuse for the delay, the court must guard itself against the danger of being led away by sympathy, and the appeal should be dismissed as time-barred, even at the risk of injustice and hardship to the appellant.”

14. The Court in the Mbukoni case went further and adopted the principles in *First American Bank of Kenya Ltd v Gulab P Shah & 2 Others* [2002] 1 EA 65 and *Edith Gichugu Koine v Stephen Njagi Thoithi* [2014] eKLR by restating that the factors considered when determining an application of this nature include:
- a. the length of the delay;
 - b. the explanation for the delay;
 - c. the merits of the intended appeal- whether arguable or frivolous; and
 - d. the prejudice likely to be suffered by the Respondent if the delay is condoned.
15. Applying these principles to the present circumstances, judgment in the lower court was delivered in June 2019. The impugned ruling was delivered on 1st April 2025. Yet the Applicant only approached this Court on 3rd September 2025. That is a period of over five months after the ruling, and over six years since judgment was entered.
16. Although the Applicant has exhibited a medical report, this Court is not persuaded that it offers a satisfactory or complete explanation for the prolonged delay. The medical narrative covers only a sliver of the relevant period, and even then provides no demonstration that the Applicant was incapacitated from instructing counsel or pursuing legal steps within statutory timelines. The Court is instead convinced that the alleged medical condition has been deployed as a well-calibrated delay



tactic triggered only when execution measures intensified — including the Notice to Show Cause proceedings.

17. It is trite that equity aids the vigilant and not the indolent. The Applicant's conduct depicts sustained passivity and an attempt to frustrate the Respondent's long-awaited enjoyment of the fruits of a lawful judgment.
18. For the reasons stated above, the Notice of Motion dated 3rd September 2025 is hereby dismissed for want of merit. The Respondent shall have the costs of the application.

It is so ordered.

DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 4TH DAY OF DECEMBER 2025.

M.D. MWANGI

JUDGE

In the virtual presence of:

Mr. Langat h/b for Ms. Jeruto for the Respondent

Mr. Sausi for the Applicant

Court Assistant: Mpoye

M.D. MWANGI

JUDGE

