



**Quanti Bill Consult Co Ltd & another v Guyo (Miscellaneous Civil Case
E011 of 2025) [2026] KEHC 335 (KLR) (22 January 2026) (Ruling)**

Neutral citation: [2026] KEHC 335 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NANYUKI
MISCELLANEOUS CIVIL CASE E011 OF 2025
AK NDUNG’U, J
JANUARY 22, 2026**

BETWEEN

QUANTI BILL CONSULT CO LTD 1ST APPLICANT

MBARAK ISMAEL WAKO 2ND APPLICANT

AND

GODANA HALAKE GUYO RESPONDENT

RULING

1. This ruling concerns the notice of motion herein dated 03/07/2025 for orders that;
 - i. Spent
 - ii. The Honorable court be pleased to grant leave to the firm of M/S Kairu McCourt Advocates who are on record for the Applicants after judgment.
 - iii. The Honorable court be pleased to grant leave to the Applicants to appeal out of time against the judgment in Nanyuki Civil Suit No. 18 of 2018 delivered on 03/10/2023.
 - iv. The court be pleased to stay execution of the judgement, declaratory suit, any form of execution vide warrants of attachment of moveable property in Civil Suit No. 18 of 2018 pending hearing and determination of the application and the intended appeal.
 - v. As a condition of stay of execution pending hearing and determination of the appeal, the Applicant be ordered to provide security for the decretal amount in the form of a bank guarantee to be issued by Family Bank Limited.
 - vi. In the alternative to (5), as a condition of stay, pending the hearing and determination of this appeal, the Applicant be ordered to provide security for the decretal sum in the form of an amount of Kshs.500,000/-.



- vii. Costs of the application abide the outcome of the intended appeal.
2. The application is based on the grounds on the face thereof and is supported by an affidavit sworn by John Ngugi, the advocate in conduct of this matter. He deposed that the Applicants instructed the firm of Kimondo Gachoka & Co Advocates to lodge an appeal after being notified the outcome of the case however, the said firm delayed in filing the appeal. That the firm of Kairu & McCourt Advocates was instructed to act in this matter in place of the previous firm and he realised that there was no memorandum of appeal in the file. That the appeal has high chances of success since the Respondent did not prove his case on assessment which amounted to an excess award.
 3. He deposed that the execution against the Appellants will render the appeal nugatory and cause irreparable loss and damage. The Applicants' insurer is ready to furnish the court with a bank guarantee or a bank deposit of Kshs.500,000/- as security. That unless stay is granted, Applicants are likely to suffer injustice and irreparable loss if the decretal sum is paid to the Respondent who would be in no position to refund the same since he has not disclosed or provided evidence of his financial standing. That the delay in filing the instant application was occasioned due to tracing of file from the previous advocates and that the judgment was delivered and forwarded without Applicants' knowledge.
 4. In opposing the application, the Respondent filed a replying affidavit sworn by Godana Halake Guyo, the Respondent herein. He deposed that after the delivery of judgment, the Applicants' advocates were served with the notice of taxation dated 31/10/2024 and Plaintiff's bill of costs. The Applicants' advocates attended the lower court on 20/11/2024, 27/11/2024 and 15/01/2025 and participated in taxation and this meant that the Applicants did not intend to file an appeal hence, the current application is an afterthought and is meant to obstruct the Respondent from enjoying the fruits of his judgment and it was triggered by execution.
 5. He deposed that no reasonable explanation has been given for the delay of 1 year 10 months, the Applicants have not demonstrated that the appeal is merited and has high chances of success, have not demonstrated the substantial loss that may result and that he will be prejudiced if the orders sought are granted as he will be denied fruits of his judgement. He deposed that he is a police officer thus in a position to refund the decretal sum. That the sum of Kshs.500,000/- offered by the Applicant as security is not sufficient since the decretal sum is Kshs.3,510,128/-. That the Applicants have not satisfied the conditions for the grant of the orders sought but if the court is inclined to grant the orders, the Applicants should be ordered to pay half of the decretal sum to the Respondent within 14 days and deposit the balance of the decretal sum in court in an interest earning account in the joint names of counsels for the parties within 14 days.
 6. The application was canvassed by way of written submissions. The Applicants' counsel maintained that the previous advocate was given instructions to lodge an appeal but failed to do so and that the award of Kshs.2,000,000/- awarded to the Plaintiff was excessive compared to the injuries he sustained. On prayer for stay, he submitted the Applicant will suffer substantial loss as the amount awarded by the trial court was exorbitant and if stay is not granted, the Respondent may execute whereas the appeal raises arguable issues with high chances of success and if the amount is paid to the Respondent, the Applicants will not be able to recover the same since his financial ability is not known. That the decretal sum may be beyond the Respondent's position as a police officer hence he is a man of straw.
 7. He submitted that the instant application was filed 1 year 10 months after the delivery of judgment hence, it was filed without unreasonable delay and the mistakes of the previous advocates should not be visited on the innocent litigant since the delay stemmed from the previous advocates failure to file an appeal on time. On security, he submitted that the Applicants are ready to provide security in the sum of Kshs.500,000/- in the form of a bank guarantee.



8. In rejoinder, the Respondent’s counsel maintained that the participation of the previous advocates in the taxation proceedings meant that the Applicants were not intending to file an appeal against the judgment hence the instant application is an afterthought. Further, no sufficient explanation has been given for the delay of 1 years 10 months. The Applicants have not demonstrated that the appeal has high chances of success and have not even availed the lower court judgment for this court to determine whether the appeal has high chances of success. He maintained that the Respondent will be greatly prejudiced as he will be denied the fruits of his judgment. That the Applicants have not demonstrated substantial loss that would ensue and that he is in a position to refund the decretal sum. Further, the proposed security is not sufficient.
9. I have considered the application, the response and the rival arguments by the parties. The Applicants seek extension of time to file an appeal and stay of execution. I will first consider the application for extension of time. The Applicant is seeking extension of time to appeal to this court against the whole judgment of Honorable Ben Mararo in Nanyuki Civil Suit No. 18 of 2018 which was delivered on 03/10/2023
10. Section 79G of the *Civil Procedure Act*, Cap 21 states that;

“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 good and sufficient cause for not filing the appeal in time.”
11. The present application for leave to appeal out of time was filed on 03/07/2025. The judgment was delivered on 03/10/2023; therefore, the delay that we are dealing with here is about 1 year 10 months.
12. Under the proviso to section 79G aforesaid, this court may admit an appeal out of time if the Applicant satisfies the court that he had good and sufficient cause for not filing the appeal in time.
13. However, extension of time is a discretionary and a very powerful tool which should be exercised with abundant caution, care and fairness. The Supreme Court in *Nicholas Kiptoo Arap Korir Salat –Vs- Independent Electoral and Boundaries Commission & 7 Others* [2014] eKLR, lay down the following general principles to guide the courts in applications for extension of time: -
 - a. . 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;
 - 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 to 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 respondents if the extension is granted;
 - f. Whether the application has been brought without undue delay; and

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14. The Court of Appeal in *Gachugu v Karaine & 3 others* (Civil Application 208 of 2020) [2022] KECA 1411 (KLR) (16 December 2022) while considering a similar application set out the following grounds to be considered before granting order for extension of time by stating as follows;

“The principles that guide the exercise of jurisdiction under Rule 4 of the Court of Appeal Rules are now well settled by numerous enunciations in case law both binding and persuasive...The principles distilled from the above case law may be enumerated *inter alia* as follows:

- i. The mandate under Rule 4 is discretionary, unfettered and does not require establishment of “sufficient reasons”. Neither are the factors for exercise of the courts unfettered discretion under the said Rule limited to: the period for the delay, the reason for the delay (possibly) the chances of the appeal succeeding and the degree of prejudice to the respondent if the application is granted; the effect of the delay on public administration and the importance of compliance with time limits; the resources of the parties and also whether the matter raises issues of public importance.
- ii. Orders under Rule 4 of the Court of Appeal Rules should not only be granted liberally but also on terms that are just unless the applicant is guilty of unexplained and inordinate delay in seeking the Courts indulgence or that the Court is otherwise satisfied beyond para-adventure, that the intended appeal is not an arguable one.
- iii. The discretion under Rule 4 of the Court of Appeal Rules must be exercised judiciously considering that it is wide and unfettered, meaning on sound reasoning and not on whim or caprice see *Githere vs. Ndiriri*.
- iv. As the jurisdiction is unfettered, there is no limit to the number of factors the Court would consider so long as they are relevant to the issues falling for consideration before the Court.
- v. The degree of prejudice to the respondent entails, balancing the competing interests of the parties, that is the injustice to the applicant in denying him/her an extension, against the prejudice to the respondent in granting an extension.
- vi. More considerations include, the conduct of the parties, the need to balance the interests of a party who has a decision in his or her favour against the interest of a party who has a constitutionally underpinned right of appeal, the need to protect a party’s opportunity to fully agitate its dispute, against the need to ensure timely resolution of disputes, the public interest issues implicated in the appeal or intended appeal and whether *prima facie*, the intended appeal has chances of success or is a mere frivolity;
- vii. Whether the intended appeal has merit or not is not an issue determined with finality by a single judge, hence the use of the word “possibly”;
- viii. The law does not set out any minimum or maximum period of delay. All it states, is that any delay should be satisfactorily explained. A plausible and satisfactory explanation for delay is the key that unlocks the Court’s flow of discretionary power, with the only caveat being that there has to be valid and clear reason upon which discretion can be favourably exercised.



- (xi) The right to a hearing is not only constitutionally entrenched, but also the cornerstone of the rule of law.

It is instructive to note that the rules do not set out the number of days that would be considered as inordinate, and therefore each case should be determined on its own facts, as held in the case of Andrew Kiplagat Chemaringo vs. Paul Kipkorir Kibet [2018] eKLR in which this Court stated as follows:

The law does not set out any minimum or maximum period of delay. All it states is that any delay should be satisfactorily explained. A plausible and satisfactory explanation for delay is the key that unlocks the court's flow of discretionary favour. There has to be valid and clear reasons, upon which discretion can be favourably exercisable."

15. To enable this court to exercise its discretion in favour of the Applicants, the Applicants had the duty to satisfy the above conditions and show this court that they had good and sufficient cause for not filing the notice of appeal in time. The reason advanced by the Applicants' advocate is that the previous advocates were given instruction to lodge an appeal but they failed to and it is only when the current advocates were instructed on this matter realized that the appeal was not filed. Further, the delay in filing the instant application was occasioned due to tracing of file from the previous advocates and that the judgment was delivered and forwarded without Applicants' knowledge. It is the Applicants contention that the mistakes of the previous advocate should not be visited upon the innocent litigants.
16. The Respondent on the other hand argued that after the delivery of judgment, his advocate wrote a letter to the Applicants' advocate on 20/12/2023 advising them of the judgment and party and party costs. The counsel was also served with notice of taxation and Plaintiff's bill of costs. The Applicants' advocate attended the lower court proceedings on 20/11/2024, 27/11/2024 and 15/01/2025 and participated in the taxation and the participation of the Applicants' previous advocate in the taxation proceedings means that they did not intend to appeal and therefore, the current application is an afterthought.
17. As the Respondent has stated, it is also my view that the current application is an afterthought and was filed when the Applicants were threatened by the impending execution. Further, the claim that the instructions were given to the previous advocate to appeal has not been substantiated by documentary evidence. The delay of 1 year 10 months has also not been sufficiently explained which delay I find to be unreasonable. It is also noteworthy that the appeal stems from a 2018 matter which means that this matter has been in court for about 8 years and it is trite law that litigation must come to an end.
18. On the contention that mistakes of the previous counsel should not be visited upon the Applicants, I find guidance in *Charles Omwata Omwoyo v African Highlands & Produce Co Ltd* [2002] KEHC 1190 (KLR) where Ringera J. (as he then was) referred to the decision of the Court of Appeal in the case of *In Mawji v Laiji & Others* [Civil application No.236 of 1992] where Kwach J.A. drew a line between negligence, pure and simple and a genuine error or mistake on the part of an advocate. He went on to cite with approval the dicta of Lord Griffins in the case of *Kettleman V Hansel Properties Ltd* [1988] 1 All ER. 38, at P.62, where the Learned Lord of Appeal in ordinary said:

Another factor that a judge must weigh in the balance is the pressure on the courts caused by great increase in litigation and the consequent necessity that, in the interests of the whole community, legal business should be conducted, efficiently. We can no longer afford to show the same indulgence towards the negligent conduct of litigation as was perhaps possible in a more leisured age. There will be cases in which justice will be better served by allowing the



consequences of the negligence of the lawyers to fall on their own heads rather than allowing an amendment at a very late stage of the proceedings.”

19. Ringera J concluded by stating that;

“I am of the same persuasion. Even if the matter involved an exercise of discretion (and not want of jurisdiction as is the case here) I would have declined to exercise the court’s discretion in favour of the applicant on the grounds that he found himself in a predicament as a result of his advocate’s alleged mistake. I think the time has come for legal practitioners to shoulder the consequences of their negligent acts or omissions like other professionals do in their fields of endeavour.”

20. From the foregoing, and for reasons above stated, the question of whether a stay of execution should be is moot. I find no merit in the application and the same is dismissed with costs to the Respondent.

DATED SIGNED AND DELIVERED VIRTUALLY THIS 22ND DAY OF JANUARY 2026.

A.K. NDUNG’U

JUDGE

