



**Directline Assurance Company Ltd v Migwi (Miscellaneous Civil Application  
E086 of 2025) [2026] KEHC 960 (KLR) (2 February 2026) (Ruling)**

Neutral citation: [2026] KEHC 960 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NYERI  
MISCELLANEOUS CIVIL APPLICATION E086 OF 2025  
DKN MAGARE, J  
FEBRUARY 2, 2026**

**BETWEEN**  
**DIRECTLINE ASSURANCE COMPANY LTD ..... APPELLANT**  
**AND**  
**BERNARD GICHUKI MIGWI ..... RESPONDENT**

**RULING**

1. The applicant sought the following orders:
  - a. Spent.
  - b. That pending the hearing and determination of this application, there be granted a stay of execution of any ruling, judgment, decree, execution order and all consequential orders in Nyeri Civil Suit No. CMCC E241 of 2023 Bernard Gichuki Migwi –Vs- Directline Assurance Company Limited.
  - c. That this Honourable court be pleased to grant leave to the Applicant (Proposed Appellant) to appeal out of time against the judgment made by the Hon. C.K. Obara on the 9<sup>th</sup> September, 2025 in Nyeri Civil Suit No. CMCC E241 of 2023 Bernard Gichuki Migwi –Vs- Directline Assurance Company Limited.
  - d. That the time for lodging an appeal against the judgment delivered by Hon. C.K. Obara on the 9<sup>th</sup> September, 2025 in Nyeri Civil Suit No. CMCC E241 of 2023 Bernard Gichuki Migwi –Vs- Directline Assurance Company Limited be extended/enlarged.
  - e. That the said leave does operate as a stay of all proceedings and/or execution of any ruling, judgment, decree, order and all consequential orders in Nyeri Civil Suit No. CMCC E241 of 2023 pending the hearing and determination of the intended appeal.



- f. That the draft annexed Memorandum of Appeal be deemed as filed upon leave being granted as per prayer 3 above and upon payment of the requisite fees thereto.
  - g. That consequently leave be granted to the applicants to lodge a Record of Appeal upon payment of the fee subject of prayer 6 hereinabove.
  - h. That costs of this application and other costs incurred herein consequential to follow the events.
2. The grounds were that they were present when the judgment was delivered. They informed the Respondent. Before they could obtain a copy of the judgment time lapsed. Execution began and irreparable loss will be occasioned. It is in the interest of justice that the application be allowed.
  3. The same was opposed by grounds of opposition dated 29/1/2026 (indicated 26) to the effect that the appeal is an afterthought meant to delay execution. The delay is grossly inordinate and the Respondent wants to enjoy the fruits of his judgment.

### **Analysis**

4. The issue before me is whether the delay in lodging a Memorandum of Appeal has been satisfactorily explained. If the reason for the delay is not sufficient, then the issue as to whether a stay of execution should be granted will not fall for determination because there will be no Appeal.
5. The discretion to extend time is unfettered. There is no limit to the number of factors the Court may consider, provided they are relevant. These factors are also unlimited and include the period of delay, the explanation tendered for that delay, the diligence or otherwise of the applicant, the prejudice to the respondent, and the overarching interests of justice. *Waki, JA in Seventh Day Adventist Church East Africa Ltd & 2 Others V Masosa Construction Company [2006] KECA 194 (KLR)*

As the discretion to extend time is unfettered, there is no limit to the number of factors the Court would consider so long as they are relevant; the period of delay, (possibly) the chances of the appeal succeeding if the application is granted, the degree of prejudice to the Respondent if the application is granted, the effect of the delay on public administration, the importance of compliance with the time limits, the resources of the parties, whether the matter raises issues of public importance are all relevant but not exhaustive factors...In an application for extension of time, each case must be decided on its own peculiar facts and circumstances and it is neither feasible nor reasonable to lay down a rigid yardstick for measuring periods of delay as explanations for such delays are as many and varied as the cases themselves...The ruling striking out the appeal is not only necessary for exhibiting to the application for extension of time but also for consultations between the applicant's counsel and their clients and the fact that the ruling was returned to Nairobi for corrections is a reasonable explanation for the delay... Where the Respondent has already recovered all the decretal sum and costs attendant to the litigation, the right of appeal being a strong right which is rivalled only to the right to enjoy the fruits of judgement, no prejudice would be caused to the respondent who has enjoyed his rights in full if an opportunity is given to the applicants to enjoy theirs too, even if it is on a matter of principle.

6. The Supreme Court of Kenya decision (*M.K. Ibrahim & S.C. Wanjala SCJJ*) in *Salat v Independent Electoral and Boundaries Commission & 7 others [2014] KESC 12 (KLR)* provided guidance on the principles to apply in extension of time, as follows:

“(1) 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.



- (2) A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the court.
  - (3) Whether the Court should exercise the discretion to extend time, is a consideration to be made on a case to case basis.
  - (4) Whether there is reasonable reason for the delay. The delay should be explained to the satisfaction of the court.
7. In an application for extension of time, where the Court is invited to exercise its discretion, there must be material placed before it to justify such exercise. Upon non-compliance with statutory or procedural timelines, the burden rests squarely on the party seeking indulgence to offer a credible and satisfactory explanation for the delay, failing which the Court has no basis upon which to exercise its discretion in their favour. In the case of *Dilpack Kenya Limited v William Muthama Kitonyi* [2018] KEHC 4858 (KLR), Odunga J, as he then was, stated as follows:

In an application for extension of time, where the Court is being asked to exercise discretion, there must be some material before the Court to enable its discretion to be so exercised. Once there is non-compliance, the burden is upon the party seeking indulgence to satisfy the court why the discretion should nevertheless be exercised in his favour and the rule is that where there is no explanation, there shall be no indulgence. See *Ratman vs. Cumarasamy* [1964] 3 All ER 933; *Savill vs. Southend Health Authority* [1995] 1 WLR 1254 at 1259.

8. It follows, therefore, that the Applicant's explanation for the delay is key in guiding the Court's exercise of discretion on the issue of leave to appeal out of time. This is the primary consideration before moving to other factors.
9. The time limit for filing an appeal is 30 days. The applicant can, however, show cause why an appeal was not filed within the time limit. Section 79 G of the [Civil Procedure Act](#) provides 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 good and sufficient cause for not filing the appeal in time.”

10. This application was filed about 3 months after the delivery of the impugned Judgment. The time is not inordinate. However, there is a duty to explain any delay. The court was not given a satisfactory explanation for the delay. There was no evidence of the need for a copy of the judgment or the request for the same. A copy of the judgment cannot be supplied through magic. The same should have been paid for or downloaded from the CTS. It was not shown that the same was not posted, and no allegation has been made to that effect. In *Alfred Iduvagwa Savatia v Nandi Tea Estate & another* [2018] KECA 660 (KLR), J. Mohammed JA. held as follows:

- (15) 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 exercised. Aganyanya, JA in *Monica Malel & Another V. R, Eldoret Civil Application No. Nai 246 of 2008* stated:-

“When a reason is proposed to show why there was a delay in filing an appeal it must be specific and not based on guess work as counsel for the applicants appears to show ..... the applicants



are not quite sure of why the delay in filing the notice of appeal within the prescribed period occurred, which amounts to saying that no valid reason has been offered for such delay.”

- (16) I am guided by the case of *Waweru & Another V Karoni* [2003] KLR 448 where it was stated that:
- “The rules of the Court must prima facie be obeyed and in order to justify a Court in extending the time during which some step in the procedure requires to be taken there must be material on which the Court can exercise its discretion.”
11. What comes out is that the applicant was woken up from deep slumber by the respondent’s filing of the garnishee proceedings. There was no reason for the delay in filing the memorandum of appeal. The garnishee proceedings were due for directions on 16.12.2025, when the application was filed on 15.12.2025.
12. It is not clear when the application dated 16.11.2025 was filed and served. The applicant failed to disclose the crucial dates. However, no action was taken from 06.11.2025 to 16.12.2025. It is not lost on the court that the applicant was aware of the court’s decision. There is no annexure of any procedural steps taken, either being communication alluded to in the affidavit or a letter requiring any document or judgment from the court. It is also not indicated on which date the court of the impugned judgment was obtained from the CTS. Consequently, I do not find any merit in the application dated 15.12.2025. It is accordingly dismissed.
13. The issue of costs is governed by Section 27 of the *Civil Procedure Act*, which provides as follows:
- (1) Subject to such conditions and limitations as may be prescribed, and to the provisions of any law for the time being in force, the costs of and incidental to all suits shall be in the discretion of the court or judge, and the court or judge shall have full power to determine by whom and out of what property and to what extent such costs are to be paid, and to give all necessary directions for the purposes aforesaid; and the fact that the court or judge has no jurisdiction to try the suit shall be no bar to the exercise of those powers: Provided that the costs of any action, cause or other matter or issue shall follow the event unless the court or judge shall for good reason otherwise order.
- (2) The court or judge may give interest on costs at any rate not exceeding fourteen per cent per annum, and such interest shall be added to the costs and shall be recoverable as such.
14. Costs are generally discretionary. However, the discretion is not arbitrary. The Court of Appeal in the case of *Farah Awad Gullet v CMC Motors Group Limited* [2018] KECA 158 (KLR) had this to say:
- “It is our finding that the position in law is that costs are at the discretion of the court seized up of the matter with the usual caveat being that such discretion should be exercised judiciously meaning without caprice or whim and on sound reasoning secondly that a court can only withhold costs either partially or wholly from a successful party for good cause to be shown.
15. The Supreme Court set forth guiding principles applicable in the exercise of that discretion in the case of *Rai & 3 others v Rai & 4 others* [2014] KESC 31 (KLR), as follows:
18. It emerges that the award of costs would normally be guided by the principle that “costs follow the event”: the effect being that the party who calls forth the event by instituting suit, will bear the costs if the suit fails; but if this party shows legitimate occasion, by successful suit, then the defendant or respondent will bear the costs. However, the vital factor in setting the preference, is the judiciously-exercised discretion of the Court, accommodating the special circumstances of the case, while being



guided by ends of justice. The claims of the public interest will be a relevant factor, in the exercise of such discretion, as will also be the motivations and conduct of the parties, prior-to, during, and subsequent-to the actual process of litigation

22. Although there is eminent good sense in the basic rule of costs - that costs follow the event- it is not an invariable rule and, indeed, the ultimate factor on award or non-award of costs is the judicial discretion. It follows, therefore, that costs do not, in law, constitute an unchanging consequence of legal proceedings - a position well illustrated by the considered opinions of this Court in other cases. The relevant question in this particular matter must be whether or not the circumstances merit an award of costs to the Applicant.

16. The respondent filed grounds of opposition very late in the day. The Respondent is under a duty to assist the court. They did not do so. They are thus not entitled to costs. Each party shall have their own costs.

**DELIVERED, DATED AND SIGNED AT NYERI ON THIS 2<sup>ND</sup> DAY OF FEBRUARY, 2026.  
RULING DELIVERED THROUGH MICROSOFT TEAMS ONLINE PLATFORM.**

**KIZITO MAGARE**

**JUDGE**

In the presence of: -

Mr. Awino for the Applicant

Court Assistant – Michael

