



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

MISCELLANEOUS APPLICATION NO. E069 OF 2025

GEOFFREY MWONGERA MURUNGI (Suing as Administrator
and Personal Representative of the estate of JOSPHAT KITHIRU
MURUNGI-Deceased.....

.....**APPLICANT**

VERSUS

MOSES NJERU IRERI.....

RESPONDENT

RULING

1. Before me is an Application dated 9th June,2025 brought under **Sections 79G, 95, 1A,1B** and **3A** of the Civil Procedure Act, **Order 51 Rule 1** of the Civil Procedure Rules. The applicant seeks leave to Appeal out of time and costs to be provided for.
2. The Application is supported by grounds set out on the face of it and the Supporting Affidavit of the Applicant Geoffrey Mwongera Murungi.

3. In a nutshell, the Applicant states that the delay in filing the Appeal was occasioned by the failure to be supplied with copies of the judgment and proceedings, despite having duly paid for them.
4. He avers that to date the proceedings and judgement has not been supplied to him and he believes that is a plausible ground for failing to lodge an appeal within 30 days.
5. In opposition to the Application the respondent swore a replying affidavit on 26th June, 2025 wherein he avers that the judgement was delivered on 23rd April,2025 and no plausible explanation has been given by the Applicant for failure to file an appeal within the stipulated time.
6. The Application was canvassed through written submissions.

Applicant's Submissions

7. The Applicant submitted that he has given a plausible reason for delay in filing the appeal and has annexed receipts to prove that he paid to be supplied with the copy of the judgement and proceedings one day after delivery of the judgement.

8. He posits that the 11 day's delay in filing the appeal is not inordinate and that no prejudice will be occasioned to the Respondent should the application be allowed.
9. The Applicant submitted that the appeal is arguable and dismissal of the Appeal will condemn him unheard. In buttressing his submissions, the Applicant relied on the cases of **Salat v Independent Electoral and Boundaries Commission & 7 others [2014] eKLR & Andrew Kiplagat Chemaringo v Paul Kipkorir Kibet [2018] eKLR.**

Respondent's Submissions

10. The Respondent submitted that the applicant has not advanced any plausible reason to warrant extension of time to file appeal and prayed that the application be dismissed with costs. In support of his submissions, he referred to the case of **Nicholas Kiptoo Arap Korir Salat v Independent Electoral and Boundaries Commission & 7 others (Supra)**

Analysis & Determination

11. The only issue that falls for determination is ***Whether the application seeking leave to appeal out of time is merited.***

12. I have duly considered the submissions by the parties on the issue.

13. **Section 79G of the Civil Procedure Act.** The section provides 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.”

14. **Section 95 of the Civil Procedure Act** provides thus: -

“Where any period is fixed or granted by the court for the doing of any act prescribed or allowed by this Act, the court may, in its discretion, from time to time, enlarge such period, even though the period originally fixed or granted may have expired.”

15. The applicant approaching the Court under this section must demonstrate **“good and sufficient cause”** for not filing the appeal in time. In **Thuita Mwangi vs Kenya Airways [2003] eKLR**, the Court of Appeal while considering Rule 4 of the Court of Appeal Rules which was in *pari materia* with Section 79G of the Civil Procedure Act, reiterated its decision in **Mutiso v Mwangi [1997] KLR 630** as follows:

“It is now well settled that the decision whether or not to extend the time for appealing is essentially discretionary. It is also well settled that general the matters which this court takes into account in deciding whether to grant an extension of time are first, the length of delay; secondly, the reason for the delay;

thirdly (possibly) the chances of appeal succeeding if the application is granted; and fourthly, the degree of prejudice to the Respondent of the application is granted.”

16. While the discretion of the court is unfettered, the applicant is obligated to adduce material upon which the court should exercise its discretion, or in other words, the factual basis for the exercise of the court’s discretion in his favor.

17. The Court of Appeal in **Aviation Cargo Support Limited v St. Mark Freight Services Limited [2014] eKLR** held as follows:

“For the Court to exercise its discretion in favour of an applicant, the latter must demonstrate to the court that the delay in lodging the record of appeal is not inordinate and where it is inordinate the applicant must give plausible explanation to the satisfaction of the court why it occurred and what steps the applicant took to ensure that it came to court as soon as was practicable.”

18. It is thus clear that even though there is no maximum or minimum period of delay set by the law, anyone seeking this relief must satisfactorily explain the cause of the delay. (See also **Andrew Kiplagat Chemaringo vs Paul Kipkorir Kibet (supra)**).
19. The Supreme Court in the case of **Nicholas Kiptoo Korir arap Salat v IEBC and 7 Others (supra)** set out the principles applicable in an application for leave to appeal out of time. The Court state *inter alia* that:

“The underlying principles a court should consider in exercise of such discretion include;

- 1. Extension of time is not a right of any 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 a case- to- case basis;

4. Whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the court;

5. Whether there will be any prejudice suffered by the Respondent if the extension is granted;

6. Whether the application has been brought without undue delay.

20. These principles were also considered in the earlier case of **Leo Sila Mutiso vs Rose Hellen Wangeri Mwangi Civil Appeal** **255/ 1997** , where the court held as follows: -

“It is now well settled that the decision whether or not to extend the time for appealing is essentially discretionary. It is also well settled that in general, the matters which this court takes into account in deciding whether to grant an extension of time are first,

the length of the delay. Secondly, the reason for the delay; thirdly (possibly) the chances of the appeal succeeding if the application is granted; and fourthly, the degree of prejudice to the respondent if the application is granted.”

21. These principles were also reiterated in **First American Bank of Kenya Ltd vs Gulab P. Shah & Others HCC 2255/2000 [2002] IEA 65** and listed them as follows: -

- The explanation if any, for the delay;
- The merits of the contemplated action, whether the appeal is arguable;
- Whether or not the respondent can be adequately compensated in costs for any prejudice that may be suffered as a result of the exercise of discretion in favour of the applicant.

22. In the present case, the judgment herein was indisputably delivered on 23rd April, 2025. The Applicant was granted 30 days stay which expired on 23rd May, 2025. The applicant states that he has, to date, not received the typed proceedings which has caused the delay in filing his

appeal. The Applicant has shown, by way of the annexed letter dated 24th April 2025 that he requested copies of the judgment and proceedings and paid for the same, as confirmed by the annexed receipts dated 25th April, 2025.

23. In my view, the delay occasioned by the failure to timely provide necessary court documents constitutes a reasonable ground for extension of time within which to file an appeal. This is entirely an administrative issue and the applicant cannot be held accountable for the resulting delay.

24. In the circumstances I allow the Application and direct that the intended appeal be filed and served within fifteen (15) days from the date of delivery of this ruling. In default, the leave granted shall lapse automatically.

25. Costs shall abide the outcome of the intended appeal.

26. It is so ordered.

Dated, Signed and Delivered at Meru this 13th day of February, 2026.

**H. M. NYAGA,
JUDGE.**