



Naiguran v Nyayiemi and Mogoa (Suing as the administrators of the Estate of one Reuben Nyayiemi Nyabuto - Deceased) & another (Civil Miscellaneous E004 of 2025) [2026] KEHC 1248 (KLR) (5 February 2026) (Ruling)

Neutral citation: [2026] KEHC 1248 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KILGORIS
CIVIL MISCELLANEOUS E004 OF 2025
CM KARIUKI, J
FEBRUARY 5, 2026**

BETWEEN

AGATHA RIMAS NAIGURAN APPLICANT

AND

**LILIAN MORAA NYAYIEMI & MORURI MOGOA (SUING AS THE ADMINISTRATORS OF THE ESTATE OF ONE REUBEN NYAYIEMI NYABUTO - DECEASED) 1ST RESPONDENT
EQUITY LIMITED 2ND RESPONDENT**

RULING

1. By Notice of Motion dated 25/6/2025. The Applicant seek: Leave for firm of Linda Wekesa Advocate to be put on record for Applicant. Leave to appeal out of time and interim orders for stay pending hearing and determination of the Decree in Kilgoris CC No. 28 of 2020.
2. Same is supported by grounds on the face of the application:
 1. The Appellant/Applicant herein is aggrieved and/or dissatisfied with part of the Judgment and/or Decree of the Honourable Magistrate Court issued on the 6th December 2024 on computation of loss of dependency which the court awarded an exaggerated amount.
 2. Consequently, the Appellant/applicant intends to lodge a Memorandum of Appeal to this Honourable Court, against the said computation on loss of dependency in Kilgoris Civil Suit 28 of 2020 between the parties in this Appeal issued on the 6th December 2024.
 3. The Appellants/Applicants' Appeal to this Honourable Court raises salient and pertinent issues of law and fact, that require investigations and suitable determination by this Honourable court.



4. The delay in filing the instant Appeal was occasioned by a breakdown in communication between the Advocate who was on record and the Applicant herein.
 5. That as a result of such breakdown in communication, the Applicant did not know that Judgment had been entered as against her for her to issue instructions.
 6. Pursuant to the Decision of this Honorable Court, the Respondent herein is keen and/or bound to execute and/or implement same before the hearing and disposal of the intended appeal.
 7. In the premised, the implementation and/or execution of the court order, shall occasion substantial loss and/or prejudice to the Appellant/Applicants.
 8. Besides, the Appellant/applicants' Intended Appeal shall be rendered Nugatory.
 9. Nevertheless, the Appellant/Applicants are intent and/or desirous to pursue the appeal to this Honorable Court.
 10. It is incumbent upon this Honorable Court to afford the Appellant/Applicant herein all the requisite facilities to pursue the appeal without fear of same being rendered nugatory.
 11. The Appellant/Applicants shall suffer undue prejudice if the orders sought are not granted.
 12. Conversely, the Respondent shall not suffer any loss and/or prejudice whatsoever.
 13. The instant Application has been made without unreasonable delay.
3. It is supported by Affidavit of Agatha Rimas Naiguran sworn on 26/6/2025 which reiterates the grounds aforesated in the motion. The background of the matter is that the Respondent lodged a suit No. 28/2020 in which the liability was agreed 40%:60% in favour of the Respondent. The matter went for quantum as it was a mining claim in which the claimant was awarded.
- Loss of dependency Kshs. 2,500,000/=
- Special damages Kshs. 90,550
- Less contribution 40% = Kshs. 1,096,220
- Net Kshs. 164,4330
- Plus, costs.
4. Being aggrieved by the verdict the appellant though belated lodged instant application seeking orders stated above. Parties were directed to canvass application via submissions and promised to file same submissions.
 5. Issues Analysis And Determination
 6. After going through the record of the trial court, I found the issues were whether the application has merit on the three limbs of the application and costs.
 7. On the first limb, I find no objection on Lind Wekesa & co adv to be on record for the applicant and appeal intended to be lodged. Thus prayer 2 of the motion is granted. On the second limb the applicant seeks leave to appeal out of time. When a party seeks leave to appeal from a Magistrate Court to the High Court after the prescribed period under Kenyan law, the application falls under Section 79G of the Civil Procedure Act. Such leave is not automatic; it is a discretionary remedy dependent on



demonstrating sufficient cause. Courts in Kenya have clarified the key factors to be considered through case law and procedural rules. These are summarized as follows:

- i. Length of the Delay; The court examines how long the appeal period has lapsed. A short, easily justified delay is more favorably viewed than a prolonged, unexplained one. The term inordinate delay does not have a fixed numerical threshold; it is evaluated contextually, considering the circumstances of the case (*Utalii Transport Co. Ltd v NIC Bank Limited*; *MSA v KMKA*).
- ii. Reason for the Delay; The applicant must provide a plausible explanation for missing the filing period. Acceptable reasons can include delays in obtaining certified copies of proceedings, illness of the appellant or close family members, or other circumstances beyond the control of the applicant (*Kemboi v Kangogo*; *Radoli v Respondents*). Mere negligence, indolence, or oversight, without justification, is unlikely to be sufficient.
- iii. Chances of Success (Arguable Appeal); Courts consider whether the intended appeal has substantive merit or is frivolous. One arguable ground is sufficient; it does not require the court to prejudge the ultimate success (*Nicholas Kiptoo Arap Korir Salat v IEBC*; *Joseph Gitahi Gachau v Respondents*).

The appeal must be not vexatious or abusive, but a prima facie arguable issue increases likelihood of leave being granted.

- iv. Prejudice to the Respondent; Courts assess whether granting the extension could unduly harm the other party. Minimal or no prejudice, especially where the respondent's rights can be protected by costs or procedural safeguards, favors the applicant. Any potential abuse of procedure or unjust delay that disadvantages the respondent weighs against the application.
- v. Good Faith and Prompt Action; Applicants must show they acted promptly once the reason for delay ceased. Applications filed after further avoidable delays may be refused on the basis of lack of diligence (*Kemboi v Kangogo*; *Fakir Mohamed v Joseph Mugambi*).
- vi. Conduct of the Parties
Delay caused solely by the advocate's inaction may not automatically disqualify the applicant if instructions were timely given (*Owino Ger v Marmanet Forest Co-op*).
Courts distinguish between deliberate procedural abuse and inadvertent delays.
- vii. Public Interest and Policy Considerations
In some cases, factors such as the importance of the matter, the interests of justice, and wider public interest may influence the court's discretion (*Fakir Mohamed vs Joseph Mugambi*). Justice may favor hearing substantive claims rather than shutting out parties on technical grounds.

Supporting Documentation

17. Affidavits explaining delay and any evidence such as correspondence with the trial court, certificates of delay for drafting proceedings, or medical reports. Draft Memorandum of Appeal is helpful but not mandatory for supporting leave to appeal applications (*MSA v KMKA*; *Radoli*).
18. References:
Section 79G, *Civil Procedure Act* (Cap 21) *Kemboi v Kangogo & another* [2024] KEHC 1801. *Leo Sila Mutiso v Rose Hellen Wangari Mwangi*, Civil Appl. 255/1997, *Fakir Mohamed v Joseph Mugambi*



& 2 others eKLR, Nicholas Kiptoo Arap Korir Salat v IEBC & 7 others, Supreme Court Application No. 16/2014, MSA v KMKA (Civil Application E123 of 2024) KECA 1222

19. The applicant application was filed on 15.6.2025 while the judgement was delivered on 6.12.2024. This was lateness of over 6 months. The justification is said to have been caused by the breakdown of the applicant and his advocate. The applicant does not demonstrate in these times and circumstances of technological advancement that he had no phone number of the advocates, or address, or even that he did not know his advocates office to enable her to visit her advocates offices for the information. Why didn't applicant even visit court to know fate of her case.
20. The court finds that no justification for that lateness thus finds no merit in the application. Thus, the court makes the orders.
 - i. The advocate is granted leave to act for the applicant
 - ii. The leave sought is denied as the explanation is insufficient and the delay is inordinate.
 - iii. The stay limb could only be considered if leave was granted.
 - iv. Costs to the respondent

DATED AND DELIVERED AT KILGORIS VIA MICROSOFT TEAMS THIS 5TH FEBRUARY, 2026.

.....

CHARLES KARIUKI

JUDGE

