



**Ojwodo v Ogutu (Civil Appeal E054 of 2024)
[2026] KEHC 1377 (KLR) (6 February 2026) (Ruling)**

Neutral citation: [2026] KEHC 1377 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT HOMA BAY
CIVIL APPEAL E054 OF 2024**

OA SEWE, J

FEBRUARY 6, 2026

BETWEEN

FILIMON ADHIAMBO OJWODO APPELLANT

AND

SIPROSA AKUMU OGUTU RESPONDENT

RULING

1. The Applicant filed a Notice of Motion dated 27th August 2024 pursuant to Sections 79G and 95 of the Civil Procedure Act and Order 50 Rule 6 of the Civil Procedure Rules for the orders that:
 - (a) The Honourable court be pleased to grant leave allowing her to file an appeal out of time and that the appeal dated 26th August 2024 be deemed as duly filed and on the record.
 - (b) The costs of this application do abide by the result of the intended appeal.
2. The application is supported by the Supporting Affidavit sworn by Filimon Adhiambo Ojwodo, the applicant herein. She deponed that the Principal Magistrate's Court at Ndhiwa delivered a ruling in MCSUCC Case No. E011 of 2023 on 26th July 2024 with which she was aggrieved; and that following the delivery of the ruling, she experienced financial difficulties which prevented her from giving instructions to her advocate at the time for the purpose of an appeal. Upon attaining financial stability, she instructed the advocates on record; but that, despite diligent efforts, the intended Appeal could not be filed within time due to downtime in the Judiciary system.
3. The applicant deposed that the intended Appeal is arguable and has a high probability of success. She further stated that the application was filed at the earliest opportunity and without undue delay. She added that the respondent will not suffer any prejudice should the orders sought herein be granted.



4. The application is unopposed. Nevertheless, I am cognizant of the Supreme Court case *Konchellah v Sunkuli & 2 others* [2018] KESC 58 (KLR) (7 September 2018) Ruling, where it was held: -

"Be that as it may, as a court of Law, we have a duty in principle to look at what the application is about and what it seeks. It is not automatic that for any unopposed application, the Court will as a matter of course grant the sought orders. It behooves the Court to be satisfied that prima facie, with no objection, the application is meritorious and the prayers may be granted. The Court is under a duty to look at the application and without making any inferences on facts point out any points of law, such as any jurisdictional impediment, which might render the application a non-starter. We see no such jurisdictional issue in the application before us. Hence we have proceeded to consider the facts before us as against the jurisprudence for grant of stay orders set by this Court..."

5. I have taken into account the undisputed facts forming the background to the present Notice of Motion. The sole issue for determination is whether the applicant should be granted leave to file an appeal out of time.

6. Section 79G of the *Civil Procedure Act*, the main provision under which the application has been brought, provides: -

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.

7. The applicant also relied on Section 95 of the *Civil Procedure Act*, which provides that:

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.

8. Lastly, the applicant cited Order 50 Rule 6 of the Civil Procedure Rules. The provision states:

Where a limited time has been fixed for doing any act or taking any proceedings under these Rules, or by summary notice or by order of the court, the court shall have power to enlarge such time upon such terms (if any) as the justice of the case may require, and such enlargement may be ordered although the application for the same is not made until after the expiration of the time appointed or allowed:

Provided that the costs of any application to extend such time and of any order made thereon shall be borne by the parties making such application, unless the court orders otherwise.

9. It is therefore a discretionary matter for the Court to enlarge time for filing appeal. In the exercise of such discretion, the Court is duty-bound to consider all the relevant factors, notably the length of the delay, the prospects of success of the intended Appeal as well as the prejudice that may be occasioned to the respondent.



10. In *Leo Sila Mutiso v Rose Hellen Wangari Mwangi*, (Civil Application No. Nai. 255 of 1997) (unreported), the Court of Appeal had the following to say in this regard:

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”.

11. The court went to state:

These, in general, are the things a judge exercising the discretion under rule 4 will take into account. We do not understand this list to be exhaustive; it was not meant to be exhaustive and that is clear from the use of the words “in general”. Rule 4 gives the single judge an unfettered discretion and so long as the discretion is exercised judicially, a judge would be perfectly entitled to consider any other factor outside those listed in the paragraph we have quoted above so long as the factor is relevant to the issue being considered. To limit such issues only to the four set out in the paragraph would be to fetter the discretion of single judge and as we have pointed out, the rule itself gives a discretion which is not fettered in anyway...”

12. Needless to say therefore that the court has discretion to grant orders of extension of time, provided the applicant presents sufficient material to the court to warrant the exercise of discretion in his/her favour. The Supreme Court reiterated this position in the case of *Salat v Independent Electoral and Boundaries Commission & 7 others* [2014] KESC 12 (KLR) (Civ) (4 July 2014) (Ruling) as hereunder:

...it is clear that the discretion to extend time is indeed unfettered. It is incumbent upon the applicant to explain the reasons for delay in making the application for extension and whether there are any extenuating circumstances that can enable the Court to exercise its discretion in favour of the applicant.

85. This being the first case in which this Court is called upon to consider the principles for extension of time, we derive the following as the underlying principles that a Court should consider in exercise of such discretion: 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; A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the court Whether the court should exercise the discretion to extend time, is a consideration to be made on a case to case basis; Whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the Court; Whether there will be any prejudice suffered by the respondents if the extension is granted; Whether the application has been brought without undue delay; and Whether in certain cases, like election petitions, public interest should be a consideration for extending time...”

13. The present appeal was filed on 27th August 2024, yet the lower court’s judgment was delivered on 26th July 2024. It is manifest that the appeal was filed out of time by two days. The applicant attributes this delay to financial difficulties and that once she secured the finances her advocate tried to file the matter but the judiciary’s e-filing system could not be accessed. Although no tangible proof of this challenge



was not presented, the Court takes judicial notice that the e-filing system is a technological platform susceptible to technical challenges. The explanation given is therefore plausible.

14. In the circumstances, and in the exercise of this Court's discretionary powers, I am satisfied that the applicant has demonstrated sufficient cause for the delay. Consequently, the application dated 26th August 2024 is merited and is hereby allowed and orders granted as hereunder:

- (a) That leave be and is hereby granted to the applicant to file and serve her Appeal out of time.
- (b) That the appeal dated 26th August 2024 be and is hereby deemed as duly filed and properly on the record.
- (c) That the costs of this application to be costs in the cause.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 6TH DAY OF FEBRUARY 2026

OLGA SEWE

JUDGE

