

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAROK

CIVIL APPEAL NO. E002 OF 2025

(CORAM: HON. CHARLES M. KARIUKI – J)

AFRICA HOPE SOCIETYAPPELLANT/2ND RESPONDENT

~VERSUS~

HANNAH MUTHONI OMONDI.....1ST RESPONDENT

SAMUEL MWANIKI WANJIHIA.....2ND RESPONDENT/CROSS-APPELLANT

RULING

18/02/2026

Introduction

1. The 1st Respondent instituted Narok CMCC No. 186 of 2018 seeking general and special damages against the Appellant herein. The Appellant subsequently joined the 2nd Respondent as a third party. Upon full hearing, a judgment was delivered on 18th December 2024. The trial court apportioned liability at 50% against the Defendant and 50% against the Third Party and awarded Kshs. 2,020,000/= in damages.
2. Aggrieved by that decision, the Appellant filed a Memorandum of Appeal dated 14th January 2025, challenging both liability and quantum. However, the appeal was later withdrawn vide a Notice of Withdrawal dated 3rd June 2025. The 2nd Respondent, dissatisfied with the trial court's judgment, filed a Cross-Appeal dated 20th March 2025, challenging both liability and quantum.

3. The matter now before this Court concerns the Appellant's application dated 18th July 2025 seeking to strike out and/or dismiss the Cross-Appeal on the grounds that it was filed out of time and without leave of the Court. The application is opposed.

The Notice of Motion

4. The application is brought under Sections 3A and 79G of the Civil Procedure Act, Cap 21 Laws of Kenya, Order 51 Rule 1 of the Civil Procedure Rules, 2010, and all other enabling provisions of the law.
5. The Appellant seeks orders that the Cross-Appeal be struck out and/or dismissed with costs. The principal grounds advanced are that the Cross Appeal was filed outside the statutory time limits and that it was filed without leave of the Court.
6. The application is supported by the affidavit of Kennedy Modi, who deposes that the Cross-Appeal was lodged more than three months after delivery of judgment and without leave.

The Replying Affidavit

7. **The** application is opposed by the Replying Affidavit of Moses Barasa, a Legal Officer at Madison Insurance Company Limited, the insurer of the 2nd Respondent.
8. He deposes that the Memorandum of Appeal was only discovered on 13th March 2025 via the online court filing platform. Upon discovery, instructions were promptly issued to file a Cross-Appeal. The Cross-Appeal was subsequently filed on 24th March 2025, approximately ten days after discovery of the appeal.
9. He further states that there is no fixed statutory timeline governing the filing of cross-appeals and that leave was not required. He contends that the application is unmerited and made in bad faith.

Submissions of the 2nd Respondent/Cross-Appellant

10. On the issue of timeliness, counsel submits that Section 79G of the Civil Procedure Act only governs the filing of appeals and does not prescribe a timeline for cross-appeals. The section provides that every appeal from a subordinate court to the High Court shall be filed within thirty days from the date of the decree or order appealed against, subject to extension for good and sufficient cause.
11. Counsel relies on *Kindest Auctioneers v Orbit Chemicals Industries Limited (2023) KEELC 21782 (KLR)*, where the Court held that although there is no fixed timeline for filing cross-appeals, they must be filed within a reasonable time after service of the Memorandum of Appeal.
12. Further reliance is placed on *Mahugu v Kipchumba & 37 others; Kipkosgei (Cross Appellant) [2024] eKLR*, where a cross-appeal filed one and a half years after the appeal was deemed to have been filed after an unreasonable delay.
13. It is submitted that filing the Cross-Appeal ten days after discovery of the appeal was reasonable and without undue delay.
14. On the question of whether the Cross-Appeal should be struck out, counsel invokes Section 95 of the Civil Procedure Act, which grants the Court discretion to enlarge time even where the prescribed period has expired. The Court is urged, in the alternative, to deem the Cross-Appeal properly on record or extend time if necessary.

Issues for Determination

15. The following issues arise for determination:
 - i. Whether the Cross-Appeal was filed out of time.**
 - ii. Whether leave of the Court was required to file the Cross-Appeal.**

iii. Whether the Cross-Appeal should be struck out and/or dismissed.

ANALYSIS AND DETERMINATION

I. Whether the Cross-Appeal Was Filed Out of Time

16. Section 79G of the Civil Procedure Act strictly governs the filing of appeals from subordinate courts to the High Court. It does not expressly regulate cross-appeals. Similarly, Order 42 of the Civil Procedure Rules does not prescribe a specific timeline within which a cross-appeal must be filed.
17. Courts have therefore developed the principle that a cross-appeal must be filed within a reasonable time.
18. In *Nicholas Kiptoo Arap Korir Salat v Independent Electoral and Boundaries Commission & 7 others [2014] eKLR*, the Supreme Court set out the principles governing extension of time, emphasizing that extension is discretionary and that the applicant must satisfactorily explain the delay.
19. In the present case, judgment was delivered on 18th December 2024. The Memorandum of Appeal was filed in January 2025. The Cross-Appeal was filed on 24th March 2025. The uncontroverted evidence is that the Cross-Appellant only became aware of the appeal on 13th March 2025.
20. A delay of approximately ten days after discovery of the appeal cannot be said to be inordinate. Even reckoning from the date of judgment, the period of about three months is not comparable to the 1.5 years considered unreasonable in *Mahugu v Kipchumba (supra)*.
21. I am satisfied that the Cross-Appeal was filed within a reasonable time.

II. Whether Leave Was Required

22. There is no statutory provision requiring leave of the Court to file a cross-appeal where it is filed in response to a subsisting appeal. At the time the Cross-Appeal was lodged, the Memorandum of Appeal was still on record. The Cross-Appeal was therefore competently filed. Thus, leave was not required.

III. Whether the Cross Appeal Should Be Struck Out

23. Striking out is a draconian remedy that should be exercised sparingly.

24. In ***DT Dobie & Company (Kenya) Ltd v Muchina [1982] KLR 1***, Madan JA observed that a matter should not be summarily dismissed unless it is plainly and obviously unsustainable.

25. The Appellant has not demonstrated any prejudice suffered as a result of the Cross-Appeal. The subsequent withdrawal of the main appeal does not automatically invalidate a properly lodged cross-appeal.

26. The overriding objective of the Court under Sections 1A and 1B of the Civil Procedure Act is to facilitate the just, expeditious, proportionate, and affordable resolution of disputes. Justice in this case demands that the Cross-Appeal be determined on its merits.

Conclusion

27. Having carefully considered the application, the affidavits, and the submissions of counsel, I find that:

- i. The Cross-Appeal was filed within reasonable time.**
- ii. Leave of the Court was not required.**
- iii. The application dated 18th July 2025 lacks merit.**

Orders

28. The Notice of Motion dated 18th July 2025 is hereby dismissed. The Cross-Appeal shall proceed to hearing on its merits. Costs of the application shall abide by the outcome of the Cross-Appeal.

29. It is so ordered.

**DATED, SIGNED, AND DELIVERED AT NAROK THROUGH TEAMS
APPLICATION, THIS 18th, DAY OF FEBRUARY, 2026**

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CHARLES KARIUKI

JUDGE