

REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA AT THIKA  
CIVIL APPEAL NUMBER E138 OF 2024

VIATA KANZA GEORGE & CHRISTOPHER NGUTA  
KASUVA.....APPELLANTS

VERSUS

JOSEPH KAMAU MWANGI.....RESPONDENT  
*(Being an appeal from ruling and orders of Honourable O.M. Wanyanga  
SRM in Thika Chief Magistrate's Court civil case number E647 of 2018 dated  
16-11-2023)*

**RULING**

By ruling dated 17<sup>th</sup> October 2025, I made the following directions after I found it unclear to me when the appeal was filed and it appeared to me that the appeal may have been filed out of time;

1. The Deputy Registrar of this court shall within fourteen days of this ruling file a report clarifying to me the date the appeal was actually filed.
2. The appellants shall within the same period file an affidavit sworn by their advocate handling the matter and supplementary submissions both addressing and explaining to me the scenario I have stated above.
3. This matter shall be mentioned on a date to be given after this ruling for purposes of confirming compliance and fixing another judgement date.

When the matter came for mention before me on 28-11-2025, there was no appearance for both parties but I received a report dated 19-11-2025 from the Deputy Registrar whose summary was that;

- a. Leave to file the appeal out of time was granted by the court on 23-04-2024 vide this court's HCJR Misc number E001 of 2023.
- b. The appeal was filed and registered on 25-06-2024.

I did not receive any affidavit or submissions from the appellant. I did not benefit from a copy of the ruling in HCJR number E001 of 2023 to enable me see the details and the specific terms of the ruling although I do not doubt the existence of the order granting leave to file appeal out of time,

It is clear from the report of the Deputy Registrar that, the leave to file appeal out of time was granted on 25-04-2024. I have not been informed that the court gave timelines within which the appellant was to file the appeal. I therefore must assume that the order or ruling was silent on that aspect. The question I have grappled with is whether the appeal having been filed on 25-06-2024 was in time which question would have been answered if the appellant had complied with my order dated 17-10-2025 by filing an affidavit explaining the circumstances and possibly supplying this court with a copy of the ruling or order.

Section 79G of the Civil Procedure Act provides that an appeal to the High Court should be filed within 30 days from the date of the ruling or decree being appealed. In my view, a purposive interpretation of that Section where the court has granted leave to lodge an appeal out of time would mean that, unless the court has specified the period within which the appeal is to be filed, the same must be filed within thirty days from the date of the court's order. It cannot be that a party who has been granted leave to appeal can sit back for eons or for a period he thinks fit to file the appeal at his convenience. That would defeat the

purpose of the statutory provision and the intention of the Legislature thereby doing a disservice to the ends of justice.

Section 58 of the Interpretation and General Provisions Act Chapter 2 of the Laws of Kenya provides that;

*‘Where no time is prescribed or allowed within which anything shall be done, such thing shall be done without unreasonable delay, and as often as due occasion arises.’*

The appellant filed this appeal sixty days after she was granted the leave and it is clear to me that there was no extension of time neither has the appellant explained the reasons for the delay which would convince this court to enlarge the time. I do consider sixty days from the date the court granted leave unreasonable especially without an explanation from the appellant and noting that the statutory period for a timely filed appeal is thirty days. I agree with my brother Honourable Justice R. Nyakundi in ***R.M. Patel & Partners Limited v Rift Valley Agricultural Contractors Limited [2025] KEHC 14930 (KLR)*** where he held that;

*‘The right to be heard on appeal should not be seen to defeat the ends of justice. A court of equity frowns at a stale claimant who sleeps on their rights and only approaches the court after a long period of time.’*

Suffice to say the appeal emanates from a ruling of the trial court which dismissed an application which sought to reinstate the suit after it was dismissed for non-attendance. Needless to say, the appellant seems to be taking the court process casually and undeserving of the timelines set by the statute. Even during the direction proceedings, the appellant did not stick to the timelines given by the court for filing of the record of appeal. Further, during the three mentions before me, the appellant did not show up to prosecute her appeal. These antecedents do not help the appellant’s case.

The upshot of the above is that I find no difficulty in holding that this appeal is incompetent for having been filed out of time and as such this court has no jurisdiction to entertain it.

The same is hereby struck out with no orders as to costs.

Dated signed and delivered at Nairobi this 27<sup>th</sup> day of **February** 2026.

**B.M. MUSYOKI**  
**JUDGE OF THE HIGH COURT.**

Ruling delivered in absence of the parties