



REPUBLIC OF KENYA



Bosire v Ong'oro (Civil Case E007 of 2025) [2026] KEHC 2738 (KLR) (5 February 2026) (Ruling)

Neutral citation: [2026] KEHC 2738 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYAMIRA
CIVIL CASE E007 OF 2025
TW CHERERE, J
FEBRUARY 5, 2026**

BETWEEN

JARED ONDEMO BOSIRE APPLICANT

AND

ALFRED OGWANG ONG'ORO RESPONDENT

RULING

Introduction

1. This ruling concerns the Notice of Motion dated 09th September 2025, brought under Article 159(2) (d) of *the Constitution* of Kenya, section 79G of the *Civil Procedure Act*, sections 3A and 3B of the *Appellate Jurisdiction Act*, and all other enabling provisions of the law.
2. By this application, Jared Ondemo Bosire (Applicant) seeks leave of this Court to lodge an appeal out of time against the whole judgment delivered on 26th February 2025 in Keroka MCCC E194 of 2024.
3. The application is supported by the Supporting Affidavit of the Applicant sworn on 09th September 2025. The Applicant deposes that judgment was entered against him ex parte in the subordinate court following non-attendance by his then advocate, despite instructions having been issued. He further explains that immediately after delivery of the judgment, execution proceedings were commenced against him, culminating in his committal to civil jail. According to the Applicant, his incarceration, coupled with continued litigation in the subordinate court and before this Court in an effort to secure stay of execution and release from custody, impeded the filing of the intended appeal within the statutory period. He annexed the judgment of 26th February 2025, the decree, proceedings, committal orders, warrants of arrest, and applications filed both before the trial court and before this Court in support of those averments.
4. He maintains that the issue of leave to appeal out of time was never raised, canvassed, or determined in those proceedings and that the present application is therefore properly before this Court.



5. The application is opposed through the Replying Affidavit of Alfred Ogwang Ong'oro sworn on 07th November 2025. The Respondent deposes that the delay of approximately six months in filing the present application is inordinate and unexplained. He contends that the Applicant has been indolent, that mistakes of counsel should not be visited upon a successful litigant, and that the consent recorded on 04th July 2025 settled the dispute and bars further litigation. He further avers that the intended appeal does not raise any arguable issues and that allowing the application would prejudice him by delaying enjoyment of the fruits of judgment.
6. The Applicant also filed a Further Affidavit sworn on 25th November 2025. In that affidavit, he responds to the issue of res judicata raised by the Respondent and clarifies that Nyamira HCCCMISC E021 of 2025, which resulted in a consent order recorded on 04th July 2025, was limited to questions of stay of execution, regulation of payment of the decretal sum, and his release from civil jail.
7. Both parties filed written submissions. In the Applicant's Written Submissions dated 09th September 2025, counsel relies on the principles governing extension of time as set out in, among other authorities, Nicholas Kiptoo Arap Korir Salat v Independent Electoral and Boundaries Commission & 7 Others [2014] eKLR, Leo Sila Mutiso v Hellen Wangari Mwangi [1999] 2 EA 231, Fakir Mohammed v Joseph Mugambi & 2 Others [2005] eKLR, Andrew Kiplagat Chemaringo v Paul Kipkorir Kibet [2018] eKLR, Gatirau Peter Munya v Dickson Mwenda Kithinji & 2 Others [2014] eKLR, and Anti-Counterfeit Authority v Francis John Wanyange & 3 Others [2019] eKLR. It is submitted that the delay was excusable, sufficiently explained, and that the intended appeal raises arguable issues.
8. In the Respondent's Written Submissions dated 08th November 2025, counsel relies on section 7 of the *Civil Procedure Act* and authorities on res judicata and finality of litigation, including Nicholas Kiptoo Arap Korir Salat v Independent Electoral and Boundaries Commission & 7 Others (supra) and Gatirau Peter Munya v Dickson Mwenda Kithinji & 2 Others (supra), to argue that the Applicant has not met the threshold for exercise of discretion and that the application should be dismissed.
9. Having carefully considered the application, the affidavits on record, and the submissions of the parties, the Court is of the view that the following issues arise for determination:
 1. Whether the present application is barred by the doctrine of res judicata
 2. Whether the Applicant has demonstrated sufficient cause to warrant enlargement of time under section 79G of the *Civil Procedure Act*
 3. Whether the delay in filing the intended appeal has been satisfactorily explained; whether the intended appeal is arguable
 4. Whether the Respondent will suffer prejudice if leave is granted; and what orders should issue.

Analysis and Determination

9. On the question of res judicata, the Respondent's case is that the consent order recorded on 04th July 2025 in Nyamira HCCCMISC E021 of 2025 finally settled the dispute between the parties and bars the present application. The Applicant's position is that the said proceedings were limited to execution-related reliefs.
10. I have examined the pleadings and the consent order annexed to the affidavits. It is evident that the issues for determination in the said miscellaneous application concerned stay of execution, terms of payment of the decretal sum, and release from civil jail, and did not extend to the question of leave to appeal out of time.



11. Applying section 7 of the *Civil Procedure Act*, and guided by the reasoning in *Gatirau Peter Munya v Dickson Mwenda Kithinji & 2 Others* (supra) on what constitutes a matter directly and substantially in issue, I find that the present application is not barred by *res judicata*.
12. The next issue is whether the Applicant has demonstrated sufficient cause to warrant extension of time. The guiding principles are settled. In *Leo Sila Mutiso v Hellen Wangari Mwangi* (supra), the Court of Appeal held that the relevant considerations include the length of the delay, the reason for the delay, the chances of the appeal succeeding, and the degree of prejudice to the respondent. The Supreme Court in *Nicholas Kiptoo Arap Korir Salat v Independent Electoral and Boundaries Commission & 7 Others* (supra) reiterated that extension of time is not a right but an equitable remedy to be granted at the discretion of the court upon a satisfactory explanation.
13. In the present case, the delay between delivery of judgment on 26th February 2025 and the filing of the present application on 09th September 2025 is approximately six months.
14. The Applicant has explained, through his affidavits, that during this period he was subjected to execution proceedings, committed to civil jail, and was actively engaged in applications before both the subordinate court and this Court to secure stay of execution and his release. He further attributes part of the delay to the conduct of his former advocate. In *Andrew Kiplagat Chemaringo v Paul Kipkorir Kibet* (supra), the Court of Appeal emphasised that what unlocks the court's discretion is a plausible and satisfactory explanation for delay. I am satisfied that the explanation offered in this case meets that threshold.
15. On whether the intended appeal is arguable, the Court is guided by the holding in *Fakir Mohammed v Joseph Mugambi & 2 Others* (supra) that an arguable appeal is not one that must necessarily succeed, but one that raises at least one bona fide issue deserving consideration.
16. The draft Memorandum of Appeal raises questions of jurisdiction, the discrepancy between the pleaded sum and the amount awarded, the basis for computation of interest, and the circumstances under which judgment was entered *ex parte*. Those issues, in my view, are not frivolous and disclose an arguable appeal.
17. As to prejudice, there exists a consent order of 04th July 2025 for payment of the decretal sum in instalments. In *Anti-Counterfeit Authority v Francis John Wanyange & 3 Others* (supra), the Court of Appeal underscored the need to balance the right of appeal against the successful party's right to enjoy the fruits of judgment. In the present case, no prejudice has been demonstrated that cannot be compensated by costs, whereas refusal of leave would permanently shut out the Applicant from the appellate process.

Disposition

18. In the totality of the circumstances, and guided by the principles enunciated in the authorities cited by the parties, I am satisfied that the Applicant has demonstrated sufficient cause for extension of time and that the interests of justice favour allowing the application.
19. Consequently, it is hereby ordered:
 1. Leave is hereby granted to the Applicant to file an appeal out of time against the judgment delivered on 26th February 2025 in Keroka MCCC E194 of 2024.
 2. The Memorandum of Appeal shall be filed and served within seven days from the date hereof
 3. Costs of the application shall be in the appeal.



4. The application having been determined, this file shall be close

DELIVERED AT NYAMIRA THIS DAY OF FEBRUARY 2026

WAMAE.T. W. CHERERE

JUDGE

Appearance -

Court Assistant - Hilda

For Applicant - Ms. Momanyi for Seneti Oburu & Co. Advocates

For Respondent - Mr. Ochoki for Ochoki & Co. Advocates

