



REPUBLIC OF KENYA



KENYA LAW
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**Gitungo v Maina (Civil Appeal E214 of 2025)
[2026] KEHC 2776 (KLR) (27 February 2026) (Ruling)**

Neutral citation: [2026] KEHC 2776 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT THIKA
CIVIL APPEAL E214 OF 2025
FN MUCHEMI, J
FEBRUARY 27, 2026**

BETWEEN

HARUN KARANJA GITUNGO APPLICANT

AND

SUSAN WANJIRU MAINA RESPONDENT

RULING

Brief Facts

1. The application dated 13th August 2025 seeks for orders of leave to file an appeal out of time against the ruling in Ruiru Small Claims Court SCCCOMM No. E702 of 2024 delivered on 4th April 2025.
2. The respondent opposed the application and filed a Replying Affidavit dated 18th October 2025.

The Applicant's Case

3. The applicant states that the respondent instituted a suit vide a statement of claim dated 30th October 2024 in the lower court and the matter was heard and default judgment delivered on 5th December 2024. The applicant avers that the said judgment was obtained ex parte as he was not made aware of the court's proceedings and therefore failed to defend the suit.
4. The applicant avers that his response to the statement of claim raises triable issues which include the fact that he does not owe the respondent money. The applicant argues that he was condemned unheard and is likely to suffer irreparable harm if the orders sought are not granted.
5. The applicant states that he filed an application of stay of execution in the court below. A ruling was rendered on 4th April 2025 dismissing his application and warrants of arrest were issued on 14/07/2025. He further states that he was unable to give instructions on filing of the intended appeal because he was not financially capable at the moment.



The Respondent's Case

6. The respondent states that the applicant was properly served with the statement of claim dated 30th October 2024 and with the subsequent court notices, mention and hearing notices. Proof of service is on record and the affidavits of service and process server's notes attest to effective service. The respondent further states that the applicant has repeatedly admitted that he received the court process by way of WhatsApp messages and he therefore cannot turn around and claim ignorance of the proceedings when he was aware of them and engaged with process servers and court officers.
7. The respondent argues that the applicant has not demonstrated any plausible or triable defence to the claim in SCCCOMM No. E702 of 2024 as the draft defence filed is a bare denial and does not disclose material facts nor raise issues of law that would defeat the claim.
8. The respondent avers that the applicant has launched multiple proceedings and applications seeking to delay execution including HCCCMISC/E185/2025 which suggest forum shopping and abuse of the court process. The respondent further states that a lack of funds is not a proper or sufficient reason to extend statutory time for filing an appeal. Further the applicant has not shown that his intended appeal has high chances of success.
9. The respondent states that after the applicant's application for stay of execution in the lower court was dismissed on 4th April 2025, he did not promptly institute an appeal but filed successive affidavits and proceeded to resist execution.
10. The respondent states that she will suffer grave and irreparable prejudice by being denied the fruits of her judgment which she obtained after successfully prosecuting her claim.
11. The applicant filed a Further Affidavit dated 1st December 2025 and states that during the service of the demand letter and the statement of claim dated 30th October 2024 he was out of the country and therefore not conversant with the law allowing service of documents through message enabled applications.
12. Parties put in written submissions with the applicant wishing not to file any submissions.

The Respondent's Submissions

13. The respondent relies on Section 79G of the [Civil Procedure Act](#) and submits that the applicant has not demonstrated any good and sufficient cause to be granted leave to file an appeal out of time. It is trite law that mere financial inability to pay fees is not ordinarily a sufficient ground for enlargement of time. Further the applicant did not show that he attempted to proceed under pauper procedure nor did he explain why he could not apply promptly when funds became available.
14. The respondent further submits that the draft memorandum of appeal has not demonstrated a prima facie case that the intended appeal has real prospects of success.
15. The respondent submits that the applicant admitted to being served with the court documents by WhatsApp and he cannot later claim to be condemned unheard. The respondent further submits that the applicant has pursued multiple overlapping applications including HCCCMISC/E185/2025 seeking the same relief.



The Law

Whether the court should exercise its discretion to grant the applicant leave to file his appeal out of time;

16. Section 79G of the *Civil Procedure Act* states:-

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 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.

17. It is clear from the wording of section 79G of the *Civil Procedure Act* that before the court considers extension of time, the applicant must satisfy the court that that he has good and sufficient cause for filing the appeal out of time. This principle was enunciated in the case of *Diplack Kenya Limited vs William Muthama Kitonyi* [2018]eKLR an applicant seeking enlargement of time to file an appeal or admission of an already filed appeal must show that he has a good cause for doing so.

18. The Supreme Court in the case of *Nicholas Kiptoo Korir arap Salat vs IEBC and 7 Others* [2014] eKLR enunciated the principles applicable in an application for leave to appeal out of time. The court stated inter alia that:-

“The underlying principles a court should consider in exercise of such discretion should include:-

- a. Extension of time is not a right of any party. It is an equitable remedy that is only available to a deserving party at the discretion of the court;
- b. A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the court;
- c. Whether the court should exercise the discretion to extend time, is a consideration to be made on a case by case basis;
- d. Whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the court;
- e. Whether there will be any prejudice suffered by the respondent if the extension is granted;
- f. Whether the application has been brought without undue delay.

19. Similarly in the case of *Paul Musili Wambua vs Attorney General & 2 Others* [2015]eKLR, the Court of Appeal in considering an application for extension of time and leave to file the Notice of Appeal out of time stated the following:-

“.....it is now settled by a long line of authorities by this court that the decision of whether or not to extend the time for filing an appeal the Judge exercises unfettered discretion. However, in the exercise of such discretion, the court must act upon reason(s) not based on whim or caprice. In general the matters which a court takes into account in deciding



whether or not to grant an extension of time are; the length of delay, the reason for the delay, the chances of the appeal succeeding if the application is granted, the degree of prejudice to the respondent if the application is granted.”

20. It is important to note that the ruling herein was delivered on 4th April 2025 and the applicant filed the current application on 13th August 2025. This is about three months outside the time limited for filing an appeal. The applicant has attributed the delay in filing its appeal on financial grounds, he argues that he lacked the financial capability to file an appeal.
21. From the record, the applicant is representing himself and his argument that he lacks finances to lodge an appeal is not sustainable. Costs filing an appeal in person is not as costly as hiring an advocate to do it. That notwithstanding, the applicant has filed numerous applications post-judgment seeking stay of execution with the last one before being in the instant court vide HCCCMISC. Case No. E185 of 2025 which was dismissed on 11th December 2025. The delay of three months is in my view, inordinate and inexcusable. The applicant has not demonstrated any plausible reasons for the delay in filing the appeal which is required of him herein.
22. On the perusal of the Memorandum of the intended appeal as well as the judgment of the court below, it is my considered view that the appeal does not raise pertinent issues of law. As such, it is evident that the chances of the appeal succeeding if the instant application is granted are not limited.
23. In the circumstances it is my considered view that the applicant has not established to the satisfaction of the court that time should be enlarged to enable him file his appeal.
24. This court on 11th December 2025, declined to grant stay of execution orders to the applicant in his application HCC Misc. No. E185 of 2025. As such, the prayer of stay herein is res judicata and is struck out from this application.
25. It is thus my considered view that the application dated 13th August 2025 lacks merit and is hereby dismissed with costs to the respondent.
26. It is hereby so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT THIKA THIS 27TH DAY OF FEBRUARY 2026.

F. MUCHEMI

JUDGE

