



**Safaricom Plc v Ngatia (Miscellaneous Civil Application  
E199 of 2025) [2026] KEHC 2870 (KLR) (27 February 2026) (Ruling)**

Neutral citation: [2026] KEHC 2870 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT THIKA  
MISCELLANEOUS CIVIL APPLICATION E199 OF 2025  
FN MUCHEMI, J  
FEBRUARY 27, 2026**

**BETWEEN**

**SAFARICOM PLC ..... APPLICANT**

**AND**

**EUNICE WANJIKU NGATIA ..... RESPONDENT**

**RULING**

**Brief facts**

1. The application dated 24<sup>th</sup> October 2025 seeks for orders of leave to file an appeal out of time against the judgment in Ruiru CM Court Civil Case No. E143 of 2024 delivered on 18<sup>th</sup> July 2025. The applicant further seeks for orders of stay of execution of the said judgment pending the hearing and determination of the appeal.
2. The respondent opposed the application and filed a Replying Affidavit dated 27<sup>th</sup> November 2025.

**Applicants' Case**

3. The applicant states that judgment in the lower court was delivered on 18<sup>th</sup> July 2025 in favour of the respondent. The applicant further states that their advocates promptly communicated the outcome and sought instructions on whether to appeal however owing to its nature as a public listed company, the decision to appeal required internal review, finance assessment and approval at several levels including the Legal Department, Finance and Senior Management. The internal process was necessitated by the quantum of the award and the potential precedent value of the judgment which required comprehensive evaluation and further the internal review and approval process occasioned some delay as various departments and signatories were required to participate in the decision making. Upon conclusion of the internal review, the applicant states that it resolved to appeal but by that time, the statutory period for lodging the appeal had lapsed.



4. The applicant states that the 30 day stay of execution granted by the lower court lapsed on 18<sup>th</sup> August 2025 after which the respondent commenced execution proceedings as she has applied for warrants of attachment.
5. The applicant argues that the intended appeal raises weighty and arguable issues particularly on whether the learned trial magistrate erred in awarding excessive damages unsupported by the pleadings and evidence. The applicant avers that the respondent will not suffer prejudice if the orders sought are granted, whereas it will suffer irreparable loss and prejudice if execution proceeds.

### **The Respondent's Case**

6. The respondent states that the alleged delay arising from the applicant's internal administrative procedures does not constitute a reasonable justification for failing to comply with the statutory timelines for lodging an appeal. It is expected that the applicant being one of the largest public telecommunications companies in Kenya with well established governance frameworks and legal department, would manage its internal procedures effectively and timeously as to comply with strict court deadlines and statutory requirements relating to the lodging of appeals. Further, the applicant's delay in filing the present application by over 3 months from the date of judgment is inordinate given that the issue before the lower court was simple.
7. The respondent states that she will suffer prejudice if the orders sought are granted as the same will delay and interfere with her right to enjoy the fruits of a lawful judgment that was granted in her favour. The respondent further states that if the court is inclined to allow the instant application, the applicant should be directed to deposit the decretal sum as security for costs with the court.
8. The respondent states that the applicant should suffer no prejudice if the orders sought are not granted given that the quantum is comparatively low in comparison to the financial value of the applicant.
9. Parties put in written submissions.

### **The Applicant's Submissions**

10. The applicant relies on Section 79G and 95 of the *Civil Procedure Act* and the cases of *Thuita Mwangi vs Kenya Airways Ltd (2003) KECA 201 (KLR)* and submits that it has met the threshold for enlargement of time to file an appeal. The applicant argues that the delay of two months is not inordinate. Further, the applicant argues that it has placed before the court a frank, plausible and unrebutted explanation that the decision to appeal required internal review, financial evaluation and approval across multiple departments.
11. The applicant argues that financial capacity is not a legal test under Section 79G nor does corporate size extinguish the right to appeal. On the arguability of the intended appeal, the applicants argue that the draft memorandum of appeal raises substantial questions on the assessment of quantum including whether the learned trial magistrate applied the correct principles and whether the award made was manifestly excessive in the circumstances.
12. The applicant submits that it is ready and willing to abide by any reasonable conditions on security that the court may impose.

### **The Respondent's Submissions**

13. The respondent relies on Section 79G of the *Civil Procedure Act* and the cases of *Nick Salat vs Independent Electoral and Boundaries Commission & 7 Others [2014] eKLR*; *Mbukoni Services Limited & Another vs Mutinda Reuben Nzili & 2 Others [2021] eKLR* and *Patrick Wanyonyi*



Khaemba vs Teacher Service Commission Board of Management, Kapletingi Mixed Day Secondary School & Francis Tanui [2019] eKLR and submits that the applicant has not met the threshold for it to exercise its discretionary power. The respondent argues that the applicant was well aware of the timelines that were involved as the legal department was involved in the internal review process. Further the respondent argues that the applicant is valued at USD 9 Billion and the award granted by the lower court would not warrant such a lengthy approval process that the applicant has averred. Further, the applicant has failed to produce any tangible evidence to the court of the lengthy corporate governance procedures, bureaucratic approvals and internal consultations. The respondent further submits that the applicant being a publicly listed company are well aware of the need to be compliant with all statutory timelines for the company does not suffer any prejudice for the sake of its shareholders.

14. The respondent submits that it is trite law that litigation must come to an end and that a successful litigant should not be deprived of the fruits of her judgment without just cause. The applicant has not demonstrated any exceptional or compelling circumstances to justify depriving her of that right. The respondent further submits that the prejudice she is likely to suffer cannot be adequately compensated by an award of costs as she has already incurred costs in defending the suit at the subordinate court and in responding to the instant application. Continued delay undermines public confidence in the administration of justice and places an unfair burden on her.
15. The respondent relies on the cases of Director of Public Prosecution vs Michael Sistu Mwaura Kamau & 4 Others [2020] eKLR and Cecilia Karuru Ngayu vs Barclays Bank of Kenya & Another [2016] eKLR and submits that the applicant's prayer that costs do abide the outcome of the intended appeal is particularly untenable as the applicant has not demonstrated sufficient cause to warrant filing of an appeal out of time and it would be speculative and unjust to defer the issue of costs to a hypothetical appeal whose very existence depends on the outcome of the instant application.

## The Law

### Whether the court should exercise its discretion to grant the applicant leave to file its 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. Applying the above principles to the present case, the judgment herein was delivered on 18<sup>th</sup> July 2025 and the applicant filed the current application on 24<sup>th</sup> October 2025. This is about two months outside the time limited for filing an appeal. The applicant has attributed the delay in filing its appeal on the ground that the decision to appeal required internal review, financial assessment and approval at several levels including the legal department, finance and senior management.
21. On perusal of the record, judgment in the lower court was delivered in the presence of both parties’ advocates and the applicant was granted stay of 30 days. The applicant admitted that it received the judgment promptly from its external counsels but argued that its internal review process caused the delay. Upon review of the reasons by the applicant it is clear that they have a legal department which was very aware of the timelines set for filing an appeal. Furthermore, the reasons given by the applicant are vague as it has not explained sufficiently how long these internal processes took or how the processes were done. That notwithstanding, the said reasons given by the applicant only touch on the internal mechanisms of the applicant which would be unfair and unjust to subject to the respondent. The legal department was aware of the timelines set for filing an appeal and therefore it is my considered view that the reasons given by the applicant are not plausible to warrant the discretion in its favour. The



applicant had thirty days to consider the determination of the lower court and carry out its internal mechanisms and proceed to file an appeal, which time is more than sufficient for it to file an appeal. Furthermore the statutory timelines apply to everyone whether they are a listed public company or not. Thus, although the delay of two months may not be inordinate, the reasons for delay are not plausible.

22. On the perusal of the intended Memorandum of Appeal and the judgment of the trial court, it is my considered view that the appeal does not raise pertinent issues of law. Thus, it is evident that the chances of the appeal succeeding if the instant application is granted are not high.
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 them file its appeal.
24. Having declined to grant the prayer for admitting the appeal out of time, the prayer for stay of execution of the trial court's judgment and decree automatically fails since there is no appeal in existence.
25. It is my considered view that the application dated 24<sup>th</sup> October 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 27<sup>TH</sup> DAY OF FEBRUARY 2026.**

**F. MUCHEMI**

**JUDGE**

