



Thika Water & Sewerage Company Limited v Korir (Miscellaneous Civil Application E211 of 2025) [2026] KEHC 2725 (KLR) (27 February 2026) (Ruling)

Neutral citation: [2026] KEHC 2725 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT THIKA
MISCELLANEOUS CIVIL APPLICATION E211 OF 2025
FN MUCHEMI, J
FEBRUARY 27, 2026**

BETWEEN

THIKA WATER & SEWAGE COMPANY LIMITED APPLICANT

AND

ELIAS CHERUIYOT KORIR RESPONDENT

RULING

Brief facts

1. The application dated 12th November 2025 seeks for orders of leave to file an appeal out of time against the determination issued by the Data Commissioner Immaculate Kassait MBS delivered on 22nd September 2025 in ODPC Complaint 0917 of 2025.
2. The respondent opposed the application and filed a Replying affidavit dated 21st December 2025.

Applicant's Case

3. The applicant states that the Data Commissioner delivered a determination in ODPC Complaint 0917 of 2025 in favour of the respondent condemning it to pay Kshs. 250,000/- to the respondent as compensation amongst other orders. The applicant states that it is aggrieved by the decision of the data commissioner and wishes to appeal the decision however time to file an appeal has already lapsed thus necessitating the filing of this application.
4. The applicant argues that the delay in filing the appeal was not intentional as their company advertised a tender for legal services inviting tenderers wherein the current advocates were considered the successful tenderers. The applicant states that the intended appeal has very high chances of success.



The Respondent's Case

5. The respondent states that the determination by the Office of the Data Protection Commissioner (ODPC) has never been set aside or varied and remains valid and binding. Further despite the determination been made on 22nd September 2025, the applicant has refused, declined and neglected to settle the award of Kshs. 250,000/-.
6. The respondent argues that the applicant has not placed before the court any evidence to substantiate the alleged tendering process and thus the allegations remain bare, unparticularized and unsupported. The only document availed by the applicant is a letter of instructions to its present advocates which does not explain the delay or constitute proof of the alleged tendering process. Further, internal administrative processes or procurement arrangements do not constitute sufficient cause to warrant extension of time.
7. The respondent states that the applicant has failed to satisfy the established legal threshold for granting stay of execution. Further, the respondent states that allowing the application will cause him prejudice as the delay has denied him the opportunity to enjoy the fruits of a lawful decision by the commissioner.
8. Parties put in written submissions.

The Applicant's Submissions

9. The applicant relies on the case of Nicholas Kiptoo arap Korir Salat vs Independent Electoral and Boundaries Commission & 7 Others [2014] KESC 12 (KLR) and submits that they have candidly, sufficiently and plausibly explained the delay. The applicant argues that it was in the process of procuring legal services to prosecute the appeal and extracted email correspondence between it, the procurement office and its counsel on record. The email refers to a Request for Quotation reference RFQ 030/2025-2026 and it communicates that as of 28/10/2025, bids to represent them had been considered and an award granted to its current counsel to proceed with the case as they processed the bid order. The applicant submits that it would not be until 12/11/2025 that the process would be finalized and a letter of authority signed appointing an executing authority which then allowed the filing of the instant application. The applicant argues that public procurement is a process heavily regulated due to the necessity of prudence in management of public finances and as such inherent inefficiencies in that process caused a 21 day delay in filing the appeal.
10. The applicant submits that the respondent shall not suffer any prejudice if the application is allowed as the decision of the ODPC resulted in a monetary award of damages to be paid to the respondent. As a matter of course, any fees or fines paid by governmental authorities have to be first acknowledged and then reported to relevant authorities in the ministry of finance for the said fines to be budgeted for and the funds for the same to be approved in the subsequent budget. Thus, if the application is denied and the respondent proceeds with execution, no possible expenditures of the fines it has been found owing would be paid until the budget making process ends with the passage of a Finance Act 2026-2027 later in the year in August.
11. The applicant argues that as soon as its current counsel's bid was successful on 28/10/2025, they instructed counsel to proceed with the case and as soon as everything was in order on 12/11/2025, upon signing the letter of authority, the instant application was ready and filed in court.

The Respondent's Submissions

12. The respondent submits that the ODPC's determination was issued on 22nd September 2025 and the present application was filed over two months later. Further, the applicant has not provided any



documentation to support its assertion that the delay was occasioned by a legal services tendering process. No tender advertisement or tender documents have been provided in support of its allegation. What has been provided is a mere letter of instructions to the advocates which does not make reference to any reasonable cause or delay or even brings to the attention of the lawyers that time is of essence. In any case, the respondent argues that internal administrative processes or procurement arrangements do not constitute sufficient cause to warrant extension of time. To hold otherwise would be to permit organizations to suspend the operation of the law at will contrary to the principles of legality, accountability and good governance. To support his contentions, the respondent relies on the cases of Paddy Distributors Limited & another vs National Cement Co. Limited & 2 Others (Civil Suit 26 of 2018) [2024] KEHC 1535 and Muchiri vs Rutere (no citation given).

13. The respondent relies on the cases of Nicholas Kiptoo arap Korir Salat vs Independent Electoral and Boundaries Commission & 7 Others [2014] KESC 12 (KLR); County Executive of Kisumu vs County Government of Kisumu & 8 Others [2017] eKLR and Motorways Kenya Limited vs Kenya Engineering Workers Union [Nairobi CACA No. 111 of 2018] and submits that the applicant has failed to demonstrate that the instant application was made without undue delay and failed to provide evidence in support of its allegation that the delay was as a result of procurement inefficiencies. The respondent further relies on the cases of Mathew Muthoga Gikonyo vs Peter Ndungu Ndirangu Nyeri CACA No. NAI 205 of 1999 (NYR 16/99) eKLR and Eliud Buku Thuku vs Beatrice Wambui Mwangi Nyeri CACA No. 267 of 2011 [2013] eKLR and submits that a two months delay to file an appeal is unacceptable and courts have declined to grant leave for even lesser periods.
14. The respondent filed supplementary submissions dated 30th January 2026 and submits that the applicant's non compliance with statutory timelines is the very gravamen of the instant application. Continued procedural non compliance including irregular filing practices and introduction of extraneous issues reinforces his submissions that the application is misconceived and amounts to an abuse of the court process.
15. Relying on the case of County Executive of Kisumu vs County Government of Kisumu & 8 Others [2017] eKLR, the respondent argues that the applicant has not made any attempt to explain the procurement process it allegedly undertook and the timelines it took and event the 15 days period from 28th October 2025 to 12th November 2025 when the current application was filed is not explained. Further the applicant did not cite its procurement policy or the relevant provisions of the public procurement laws and regulations to assist the court in continuously understanding the alleged mitigates propounded by the applicant.
16. The respondent submits that the applicant has not demonstrated good faith as it has shown that it may have room to frustrate his enforcement efforts through budgetary means which does not become the basis for granting it the right to appeal out of time. It further signals an intention to delay compliance irrespective of the court's determination and underscores the absence of good faith.
17. The respondent submits that an online search on the applicant's tenders for the year 2025 shows that there is no tender under the reference RFQ 030/2025-2026 which further casts doubt on the claim that there was a tender process.

The Law

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

18. 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.

19. 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.
20. 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.
21. 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.”

22. Applying the above principles to the present case, the determination by the data commissioner was made on 22nd September 2025 and the applicant filed the current application on 12th November 2025. This is about 21 days outside the time limited for filing an appeal. The applicant has attributed the



delay in filing its appeal on the ground that it was undertaking a procurement process to hire its current advocates to represent them on appeal.

23. On perusal of the record, the decision by the data commissioner was issued on 22nd September 2025. In the said decision, paragraph 49 is clear that parties were at liberty to appeal on the decision within thirty days. However Section 79 of the *Civil Procedure Act* provides for extension of time should a party, with good reasons fail to file an appeal within the timelines allowed by the law. The applicant may have had legal presentation during the data protection proceedings as is shown by their response to the allegations vide letter dated 8th August 2025. However, there is a possibility that the applicant may have decided to change the advocate or that procurement for an advocate for the appeal has to be done afresh due to the nature of the proceedings as well as considering the performance of the advocate engaged in the earlier proceedings. Be as it may, companies or parastatals or Government Ministries are required to procure for their goods and services. These include raw materials, office supplies and professional services. The process calls for identifying and sourcing the best suppliers or service providers at the most favourable cost. The process may take time to be completed. This court takes judicial notice of the length of time that may be taken before goods or services required are identified and supplied.
24. Although applicant did not annex the procurement documents, it goes without saying that procurement is not a process to be achieved in a few days due to the procedure and requirements outlined under the Procurement and Supply Chain Law. It is not denied that any procurement of legal services was not done by the applicant.
25. Considering the delay in filing the appeal, it is noted that the applicant was late with only twenty-one (21) days which cannot be regarded inordinate or inexcusable.
26. I have perused the grounds of appeal and noted the applicant is aggrieved by both liability and quantum in the determination of the Data Commissioner in ODPC Complaint No.0917 of 2025. The grounds relied on are, in my view, arguable and calls for the applicant to be given a chance to institute and argue his appeal.
27. I find the application merited and hereby allow it on the following terms:-
- a. That the applicant has 14 days to files its appeal and in default of compliance, these orders shall be vacated.
 - b. That stay pending filing and determination of the intended appeal is hereby granted.
 - c. That the applicant shall within thirty (30) days deposit the decretal amount in court pending hearing and determination of the intended appeal in default of which the stay orders shall be vacated .
 - d. That the costs of this application shall go to the respondent.
28. It is hereby so ordered.

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

F. MUCHEMI

JUDGE

