

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

HCCC NO. E141 OF 2025

AILEEN

KATHAMBI

.....**APPLICANT**

-VERSUS-

KENYA WILDLIFE SERVICE

RESPONDENT

RULING

1. Vide an application dated 3/10/2025, the applicant has sought the following orders:
 - a) Spent
 - b) That this honourable court be pleased to grant the applicant leave to appeal out of time against the entire judgment delivered on 4th August, 2025 in SCCC No. E265 of 2025 by the Honourable Magistrate at Meru.
 - c) That orders 1 and 2 above do apply to Meru Sccc No. E267, E269, E271, E273, E275, E277, E281, E283, E285, E287, E289, E291, E293, E295, E298, E300, E302, E304,

E320, E322, E324, E326, E328, E331, E335, E339, E341, E343, E345, E346, and E348, all of 2025.

d) That the costs of this application be in the intended appeal.

2. The application is propped by the grounds set out in its face and the applicant's affidavit sworn on even date.
3. The applicant's case is that his claim was dismissed by The Small Claims Court at Meru by its judgment delivered on 14/08/2025. That he is aggrieved by the said Judgment and intends to appeal against it, but was unable to do so within the time stipulated by statute.
4. The applicant explains that the delay in filing an appeal was caused by financial constraints that rendered him unable to raise the requisite filing fees within time. Further, that she was awaiting the issuance of the judgment and proceedings of the lower court. That she made a request for the same vide a letter dated 18/8/2025.
5. The applicant further states that the appeal raises serious issues of law with a reasonable chance of success. That the prejudice will be caused to the respondent.

6. The respondent filed a replying affidavit sworn by Gideon K. Mutai, its legal officer. He avers that an extension of time to file an appeal is not a right. That good and deficient cause ought to be shown for such an extension to be granted. That in the case no good reasons are adduced. That the application has been brought after unreasonable delay. That the judgment was uploaded on the CTS on the same day it was delivered. That there is no requirement for proceedings to be availed prior to filing appeal.
7. Section 79G of the Civil Procedure Act gives this court power to enlarge time to file an appeal. It states as follows:

“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 to the appellant 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.”

8. The applicant approaching the Court under this section must demonstrate **“good and sufficient cause”** for not filing the appeal in time.
9. In **Thuita Mwangi vs Kenya Airways [2003] eKLR**, the Court of Appeal while considering Rule 4 of the Court of Appeal Rules which is in *pari materia* with Section 79G of the Civil Procedure Act, reiterated its decision in **Mutiso v Mwangi [1997] KLR 630** as follows:

“It is now well settled that the decision whether or not to extend the time for appealing is essentially discretionary. It is also well settled that general the matters which this court takes into account in deciding whether to grant an extension of time are first, the length of delay; secondly, the reason for the delay; thirdly (possibly) the chances of appeal succeeding if

the application is granted; and fourthly, the degree of prejudice to the Respondent of the application is granted.”

10. While the discretion of the court is unfettered, the applicant is obligated to adduce material upon which the court should exercise its discretion, or in other words, the factual basis for the exercise of the court’s discretion in his favor.
11. The Court of Appeal in **Aviation Cargo Support Limited v St. Mark Freight Services Limited** [2014] eKLR held as follows:

“For the Court to exercise its discretion in favour of an applicant, the latter must demonstrate to the court that the delay in lodging the record of appeal is not inordinate and where it is inordinate the applicant must give plausible explanation to the satisfaction of the court why it occurred and what steps the applicant took to ensure that it came to court as soon as was practicable.”

12. I have duly considered the matter. Judgment was delivered on 14/8/2025. This application was filed on 3/10/2025 about 2-3 weeks after the time for filing appeal lapsed. I find that the delay is not unreasonable.
13. The reasons for the delay have been considered. I agree with the respondent that a party does not require proceedings in order to file an appeal. That said, the appellant is required to file a copy of the decree appealed against. Such decree, for purposes of appeal includes a judgment as per the provisions of section 2 of the Civil Procedure Act.
14. The applicant also cites financial reasons for her inability to file appeal on time. To me, the reasons adduced are premised on the wrong understanding of the law, but provide a reason that is plausible.
15. The respondent is not going to be prejudiced as it will get a chance to ventilate its issues.
16. The exercise of the court's discretion is meant for and in the dispensation of justice and on this ground, I am inclined to allow the application on the following grounds:

- a) Leave is granted to the applicant to file an appeal out of time.**
- b) The memorandum of appeal to be filed within 14 days of this order.**
- c) In default of (b) above leave so granted shall lapse automatically.**
- d) Costs of the application shall abide by the outcome of the intended appeal and if none is filed then the applicant shall bear the costs herein.**

- 17. The applicant had also sought that similar orders issue in the listed matters.
- 18. That request is very interesting. The applicant is not a party in those other matters so she cannot purport to seek blanket leave to appeal on behalf of others in all the listed matters.
- 19. If my guess is correct, and I believe it is, the request for the orders herein to apply to matters not before this court was an attempt to save on costs incurred as filing fees.

20. In my view, the request may require a very sympathetic ear but it would create a dangerous precedent and would lead to loss of revenue that is required to be raised on each file.

21. That request is thus declined.

Dated, signed and delivered at Meru this 12th day of March 2026.

H. M. NYAGA

JUDGE