



REPUBLIC OF KENYA



**Abdullahi v Abdullahi (Miscellaneous Application E029 of 2025)
[2026] KEHC 4038 (KLR) (19 March 2026) (Ruling)**

Neutral citation: [2026] KEHC 4038 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ISIOLO
MISCELLANEOUS APPLICATION E029 OF 2025
SC CHIRCHIR, J
MARCH 19, 2026**

BETWEEN

BISHAR ABDULLAHI APPLICANT

AND

LULA ABDULLAHI RESPONDENT

RULING

1. What is coming up for determination is the Applicant's Notice of Motion dated 30th June 2025, brought under Order 22 Rule 22, Order 42 Rule 6, and Order 51 Rule 1 of the Civil Procedure Rules; Sections 1A, 1B, 3A, 79G, and 95 of the *Civil Procedure Act*; and Rule 87 of the Kadhi's Court Rules, 2020.
2. The Applicant seeks the following orders:
 1. That the time for filing an appeal against the judgment and decree delivered on the 8th day of May 2025 by Hon. Gavava Awadh Mohamed, Senior Resident Magistrate at Isiolo Kadhi's Court, be extended to allow the Applicant to file the appeal out of time.
 2. That the costs of the application be provided for.
 3. Such further or other orders as this Honourable Court may deem fit and just to grant.
3. The applicant states that she was unable to file the appeal within the statutory 21-day period due to a lack of legal representation and a lack of awareness that the judgment had been delivered. It is stated judgment was delivered on 8th May 2025, and the prescribed period for appeal expired on 29th May 2025.
4. The Applicant contends that she has a meritorious case to present on appeal. She specifically intends to contest the inclusion of 12 camels and one she-camel as part of the estate under Hibah (gift), which she believes, was improperly handled under Islamic law.



5. The Applicant further argues that failure to grant a stay will result in irreparable prejudice, as the distribution of the deceased's estate has already commenced, potentially leading to the loss of her rightful share.
6. The Application is opposed by the Respondent through a Replying Affidavit sworn on 29th October 2025. The Respondent argues that the application is brought in bad faith to delay the process of distribution, and that the court lacks jurisdiction, as no memorandum of appeal was annexed.
7. The Respondent further contends that the Applicant was aware of the judgment, as it was shared on a family WhatsApp platform by one of the beneficiaries on 21st May 2025. The Respondent deposes that the Applicant slept on her rights as equity helps the vigilant and not the indolent.
8. I have considered the rival pleadings and the only issue that arises for determination is whether the Applicant has met the threshold for the grant of leave to file an appeal out of time.
9. Section 79G of the *Civil Procedure Act* stipulates the period of filing appeals from the subordinate courts to the high court, which includes the Kadhi's court. It provides:

“Every appeal from a subordinate court to the High Court shall be filed within a period of thirty (30) 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.”
10. Further the supreme court of Kenya in the case of *Nicholas Kiptoo Arap Korir Salat v IEBC & 7 others* eKLR, set out the guiding principles as follows:
 - “1. Extension of time is not a right of a party. It is an equitable remedy that is only available to a deserving party at the discretion of the court;
 2. A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the court;
 3. Whether the court should exercise the discretion to extend time, is a consideration to be made on a case to case basis;
 4. Whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the court;
 5. Whether there will be any prejudice suffered by the respondents if the extension is granted;
 6. Whether the application has been brought without undue delay; and
 7. Whether in certain cases, like election petitions, public interest should be a consideration for extending time”
11. Thus, the decision whether to extend time for filing an appeal out of time is application must be filed without undue delay and the same should not cause the Respondent to suffer any prejudice discretionary and must be considered on a case-to-case basis. The
12. A perusal of the record shows that judgment was delivered on 8th May 2025 and the present Application was filed on 30th June 2025. This represents a delay of approximately one month. Contrary to the respondent's submission, the delay is not inordinate.



13. The Applicant has further sated that she was not aware about the delivery of judgment. The Respondent however asserts that the judgment was shared via WhatsApp. However, there is no evidence that the Applicant was a member of the referred group.
14. The Applicant has stated that one of the issues she intends to have it taken up on Appeal is the question of whether the distribution of some of the assets the Estate complied with Islamic Law. The court finds that the Applicant has laid a prima facie arguable issue, warranting a chance to ventilate on Appeal.
15. The Application is merited and it is hereby allowed. The Applicant to file the Appeal within the next 14 days from the date of this Ruling.

DATED, SIGNED AND DELIVERED AT ISIOLO THIS 19TH DAY OF MARCH 2026

S. CHIRCHIR

JUDGE

In the presence of :

