



**Agwata v Chitechi (Civil Appeal E064 of 2023)
[2026] KEHC 5619 (KLR) (28 April 2026) (Ruling)**

Neutral citation: [2026] KEHC 5619 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
CIVIL APPEAL E064 OF 2023**

**S MBUNGI, J
APRIL 28, 2026**

BETWEEN

STEPHEN SHIKUKU AGWATA APPLICANT

AND

LEONARD ANYANJE CHITECHI RESPONDENT

RULING

1. The Applicant filed a notice of motion application dated 18th December 2024, where he sought the following orders;
 - a. That the present application herein be certified urgent and be herein on priority basis
 - b. That the orders of this court dismissing the appeal be set aside.
 - c. That the orders of this court made on 21st September be reviewed and the time for filing the record of Appeal and submissions herein be extended
 - d. That cost hereby be provided for.
2. The application is supported by the affidavit of the Applicant, sworn on the same date, where he avers that after the judgment was issued, they applied for proceedings in time and they were issued to him on 18/01/2024 and started the appeal process immediately; however, at that time, he noted that some of the pleading pages 8,10,12,14 and 20 had been left out.
3. He states that he reported the error to the court administrator, and being unaware of the order, his appeal was automatically dismissed for which he learned about it on 29/9/2023.
4. He contends that the failure to comply with the order was not intentional and attributed it to factors beyond his control and prays that the court allows his day in court in the interest of justice as per Articles 48 and 50 of *the Constitution*.



5. The respondent filed their response via a replying affidavit dated 11th November 2025, contending that on 29/9/2023, the court dismissed the appeal for non-compliance with directions by stating that “that time is of the essence and if there shall occur a default the appeal shall be dismissed.”
6. They state that the orders by the court were clear in that the applicant had been informed to comply with the terms that had been given at the directions when admitting the appeal in default, and the appeal was dismissed.
7. He opposed the allegation by the applicant that the non-compliance was due to the proceedings not being ready and states that they had the option of approaching the court earlier, before 29/9/2023, to explain the need to extend the timing, and thus his reason for not approaching the court was not justifiable as the application was filed after 1 year and three months from the date of the judgment.
8. He avers that the application is an abuse of the court’s process, and further, though he claims that he approached the court seeking the typed proceedings, there was no record to prove that he approached the court.
9. At the time of writing the appeal the parties had not filed their submissions.

Analysis and determination

10. I have considered the application and the response herein by the parties.
11. The main issues for determination is whether the applicant have provided grounds to allow for enlargement of time as well set aside the orders for appeal.
12. Under section 79G of the *Civil Procedure Act*, an appeal from a subordinate court to the High Court should be filed within thirty days, though the court may admit an appeal out of time if the appellant shows good and sufficient cause for the delay. In exercising discretion to extend time, the court considers the length of delay, the reason for the delay, the chances of the appeal succeeding, and the prejudice to the respondent.
13. The law on extension of time is well settled. In *Nicholas Kiptoo Arap Korir Salat v IEBC & 7 Others*, the Supreme Court emphasized that extension of time is an equitable remedy, dependent on the discretion of the court, to be exercised judiciously and on sound principles. Among the guiding factors are the explanation for the delay, the length of delay, and whether any prejudice would be occasioned to the respondent.
14. Likewise, in *Leo Sila Mutiso v Rose Hellen Wangari Mwangi*, C. A. Appl. No. Nai. 251/97 (ur) it was stated that “It is now settled that the decision whether or not to extend the time for appealing is essentially discretionary. It is also well settled that in general, the matters which this Court takes into account in deciding whether to grant an extension of time are: first the length of the delay; secondly, the reason for the delay; thirdly, (possibly); the chances of the appeal succeeding if the application is granted, and fourthly, the degree of prejudice to the respondent if the application is granted.”
15. In the present matter, it is not disputed that the appeal was dismissed on 29th September 2023 for failure to comply with court directions. It is also evident that the present application was filed after a considerable period of time.
16. The Applicant attributes the delay to missing pages in the proceedings and the consequent difficulty in preparing a complete record of appeal. While the Applicant has not furnished documentary proof of follow-up with the court registry, this court takes judicial notice of the practical challenges occasionally encountered in obtaining complete court records.



17. More importantly, the right to be heard is a cornerstone of our legal system. Article 50 of *the Constitution* guarantees every person the right to a fair hearing, while Article 48 secures access to justice. These provisions oblige the court to lean, where appropriate, towards sustaining rather than terminating proceedings on technical grounds.
18. In *Philip Chemwolo & Another v Augustine Kubende* civil appeal 103 of 1984, the court stated “Blunders will continue to be made from time to time and it does not follow that because a mistake has been made that a party should suffer the penalty of not having his case determined on its merits.”
19. This court is not blind to the fact that the delay is significant however I am persuaded that in the interests of substantive justice would be better served by affording the Applicant an opportunity to ventilate his appeal. Any prejudice that may be suffered by the Respondent can be adequately compensated by an award of costs.
20. This Court is also guided by the overriding objective under Sections 1A and 1B of the *Civil Procedure Act*, which enjoins the court to facilitate the just, expeditious, proportionate, and affordable resolution of disputes.
21. In the circumstances, and in the wider interests of justice, I find that this is a proper case for the exercise of this Court’s discretion in favor of the Applicant.
22. Accordingly, the Notice of Motion dated 18th December 2024 is hereby allowed on the following terms:
 - a) The orders dismissing the appeal are hereby set aside.
 - b) Time for filing and serving the Record of Appeal and submissions is hereby extended by a period of thirty (30) days from the date hereof.
 - c) The Applicant shall ensure strict compliance within the stipulated timelines, failing which the orders herein shall lapse automatically.
 - d) Costs of the application shall abide the outcome of the appeal.
 - e) Mention 24.6.2026 for further directions.
 - f) Right of Appeal 30 days.

DATED, SIGNED AND DELIVERED AT KAKAMEGA THIS 28TH DAY OF APRIL, 2026.

S.N MBUNGI

JUDGE

In the presence of:-

CA: Velma/Angong’a

Parties absent.

Advocates absent though aware of the ruling date. The Court Assistant to upload the ruling in the CTS forthwith.

