



REPUBLIC OF KENYA



KENYA LAW
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Kagiri v Nyaga (Civil Appeal E019 of 2026) [2026] KEHC 5994 (KLR) (30 April 2026) (Ruling)

Neutral citation: [2026] KEHC 5994 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT CHUKA
CIVIL APPEAL E019 OF 2026**

**RL KORIR, J
APRIL 30, 2026**

BETWEEN

JAMES GACAH KAGIRI APPELLANT

AND

DAVIS MUCHANGI NYAGA RESPONDENT

RULING

1. For determination is the Application dated 2nd October 2025 seeking the following orders: -
 - i. That this honourable court be pleased to strike out the Appellant's Record of Appeal dated 23rd June 2025 and the Memorandum of Appeal dated 2nd May 2025.
 - ii. That costs of the application be provided for.
2. The Application is founded on the grounds on the face of the application and on the supporting affidavit of Davies Muchangi Nyaga of even date. It was deponed that on 20th April 2025, the court granted the Appellant 30 days to file his record of appeal and directed that the sum of Kshs. 300,000 be deposited in court as security for costs.
3. He averred that the Appellant has not made the deposit as directed and further disobeyed the court orders by filing the record of appeal on 23rd June 2025 outside the time given without leave of the court. That the said record be struck out.
4. The Appellant filed a replying affidavit dated 28th October 2025 stating that the record of appeal should have been filed on or before 29th May 2025 but the same was not done due to a delay in obtaining typed proceedings from the registry. That the proceedings were certified on 17th June 2025 and obtained on 19th June 2025. That the delay was not inordinate and the court should exercise its discretion and excuse the delay as the memorandum of appeal was filed within time.



5. He stated that failure to deposit costs was an oversight on his part and sought that the court grants him a maximum of 15 days to follow up on the same with his insurance.
6. He averred that striking out the record of appeal will defeat the entire appeal before it is heard on its merits.
7. The court directed that the Application be canvassed by way of written submissions. The Respondent filed his written submissions dated 3rd November 2025 while the Appellant did not file any submissions.
8. The Respondent submitted that the Appellant failed to adhere to the timelines set by the court. That he lacked interest in prosecuting his appeal as demonstrated by failure to pay security for costs. He relied on the case of *Mwicigi and 14 others v Independent Electoral and Boundaries Commission and 5 others* [2016] KESC where the Supreme court underscored the importance of procedure as being closely tied to the substance of a case and not a mere technicality; that where essential procedural steps are ignored, the Court may declare the pleadings incompetent.
9. The law on extension of time and compliance with procedural timelines is well settled. In the case of *Leo Sila Mutiso v Rose Hellen Wangari Mwangi* (Civil Application No. Nai 255 of 1997) (unreported), the Court held that:-

“It is now well settled that the decision whether or not to extend the time for appealing is essentially discretionary. It is also well stated 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.”

10. Applying those principles to the present case, I note that the Record of Appeal ought to have been filed by 29th May 2025 but was instead filed on 23rd June 2025. The delay is therefore approximately twenty-five (25) days. The explanation offered by the Appellant, namely the delay in obtaining typed proceedings, is plausible and is a factor that courts have previously taken into account. In *Nicholas Kiptoo Arap Korir Salat v Independent Electoral and Boundaries Commission & 7 Others* [2014] eKLR, the Supreme Court emphasized that extension of time is not a right but an equitable remedy that should be granted where sufficient cause is shown. I am satisfied that, in so far as the filing of the Record of Appeal is concerned, the delay is not inordinate and has been reasonably explained.
11. The Appellant was also expressly directed to deposit security for costs in the sum of Kshs. 300,000. This was not a mere procedural formality but a substantive order of the Court intended to safeguard the interests of the Respondent. To date, the Appellant has not complied with that order and only offers an explanation of oversight, coupled with a request for additional time.
12. Courts have consistently held that court orders are not issued in vain and must be obeyed. In *Hadkinson v Hadkinson* [1952] 2 All ER 567, it was held that a party who disobeys a court order cannot be heard or allowed to proceed until such disobedience is purged. Similarly, in *Econet Wireless Kenya Ltd v Minister for Information & Communication of Kenya & Another* [2005] eKLR, Ibrahim J (as he was then) underscored that obedience of court orders is not optional but mandatory, and that the rule of law demands compliance.



13. I am also mindful that the requirement for security for costs is not ornamental. It is a condition imposed by the Court for the continued prosecution of the appeal. Failure to comply with such a condition, absent sufficient justification, goes to the root of the appeal.
14. While I am inclined to excuse the delay in filing the Record of Appeal, I am unable to overlook the Appellant's failure to comply with the order on security for costs. The explanation of "oversight" is neither satisfactory nor sufficient, particularly given the clear terms of the Court's earlier order. Parties must litigate in good faith and demonstrate diligence and respect for court procedures.
15. That said, I am equally alive to the principle that courts should, where possible, determine matters on their merits rather than on procedural lapses. Striking out pleadings is a draconian remedy that should be resorted to sparingly.
16. Balancing these competing considerations, I take the view that the ends of justice would best be served by granting the Appellant a final opportunity to comply with the Court's orders rather than striking out the appeal.
17. In the end, I make the following orders:-
 - i. The Application dated 2nd October 2025 is hereby disallowed.
 - ii. The Appellant shall deposit the sum of Kshs. 300,000 as security for costs within fourteen (14) days from the date hereof.
 - iii. In default of compliance with the order above, the Record of Appeal dated 23rd June 2025 and the Memorandum of Appeal dated 2nd May 2025 shall stand struck out, and without further need to apply.
 - iv. The costs of the application shall abide the outcome of the appeal.

RULING DELIVERED, DATED AND SIGNED AT CHUKA THIS 30TH DAY OF APRIL, 2026.

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R. LAGAT-KORIR

JUDGE

Ruling delivered in the presence of Mr. Odiro for the Appellant and in the absence of the Respondent. Muriuki (Court Assistant).

