

THE REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MURANGA
MISC APPLICATION NO. E143 OF 2025

JANE WAMBUI MAINAAPPLICANT/INTENDED APPELLANT

VERSUS

PETER MBUI MAINA RESPONDENT

RULING

1. Before this court for consideration is the Appellant's Notice of Motion dated 19th December 2025, which is expressed to be anchored **Under Order 22 rule 22, Order 51 rule 1 and 3** of the **Civil Procedure Rules 2010**, as read together with **Sections 3, 3A and 79G** of the **Civil Procedure Act**. The Applicant/Intended Appellant seeks the following Orders as against the Respondent:
 - i. Spent.*
 - ii. THAT this Honourable Court be pleased to grant the intended Appellant/Applicant leave to file an Appeal out of time.*
 - iii. THAT this Honourable Court be pleased to grant a stay of execution of the Judgment and or decree delivered by the HON. SUSAN N. MWANGI SRM on 22.10.2025 and all other consequential orders pending the hearing and determination of this application and Appeal.*
 - iv. THAT the Application be heard inter parties on such date and time as this Honourable Court may direct.*
 - v. THAT the costs of this Application abide the outcome of the Appeal.*

2. The application is premised on the grounds set out on its face and in the Affidavit sworn by Jennifer Ndindi Omari on 19th December 2025 in her capacity as Counsel holding brief for the firm of Mutunga & Company Advocates which firm was retained by the Applicant for purposes of prosecuting case number MCC No.E284 of 2024 Muranga. The Applicant relied on the following grounds.

- i. THAT the applicant instructed the firm of Mutunga & company Advocates to prosecute the matter, and the matter was prosecuted up to its final conclusion when judgment was delivered on 22.10.2025 dismissing the claim.*
- ii. THAT the advocate who appeared on behalf of the Applicant on 27.8.2025 Ms. Omari Advocate made an inadvertent mistake and diarized the date of delivery of judgment as 08.12.2025.*
- iii. THAT the advocate only realized this mistake on 08.12.2025 upon logging into court and realizing that the same was not cause listed and on checking the e-filing portal realized that the same had already been delivered on the 22.10.2025.*
- iv. THAT the trial court had also ordered the Respondent's counsel to serve a Judgment Notice upon the Applicant's counsel which was never done and neither was any affidavit of service filed in court.*
- v. THAT failure to file the Appeal within the statutory time limit was an inadvertent error on the part of the Advocates and should not be visited upon and innocent litigant.*
- vi. THAT the Applicant has strong desire to exercise her right of appeal and has an arguable appeal with high chances of success as shown in the annexed Memorandum of Appeal.*

- vii. *THAT the time to appeal has run out.*
- viii. *THAT the Applicant undertakes to prosecute the appeal expeditiously and is willing to abide by any conditions set by the court for the grant of orders sought.*
- ix. *THAT the Respondent is not likely to suffer any prejudice if the orders sought herein are granted and if any prejudice is occasioned, the same can be compensated in costs.*
3. THAT the Applicant lodged a suit being Muranga CMCC NO. E284 of 2024 vide plaint dated 17th December 2024 seeking compensation for injuries sustained in a road traffic accident occurring on 12th May 2024 along Kwa Maji-Kangema Road in Muranga County, involving motor vehicle registration number KCJ 929N belonging to the Respondent.
4. At the trial, PW1 Corporal Abdi Guyo testified that on the date of the aforesaid accident, the Applicant was a passenger in motor-cycle registration number KMEQ 922T alongside three other pillion passengers.
5. In ruling in favor of the Respondent, the trial Court adjudged the Applicant the author of her own misfortune and held that she failed to take reasonable measures for her own safety by voluntarily boarding an overloaded motor-cycle and failing to wear a helmet.
6. The Applicant prays for this Court's leave to appeal out of time against the trial Court's holding on grounds that her counsel on record erroneously diarized the date of delivery of the trial Court's Judgment as 8th December 2025 rather than 22nd October 2025. She further averred that by it is only on 8th December 2025 that she became aware of that the trial Court entered Judgment against her on 22nd October 2025.

7. **Section 79G** of the **Civil Procedure Act** provides that:

Time for filing appeals from subordinate courts
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 subject Application is not opposed. The Court has considered the Applicant/Intended Appellant's Memorandum of Appeal on file dated 13th January 2026.
9. Further, the Court has carefully perused the Supporting Affidavit of Jennifer Ndindi Omari dated 19th December 2025 wherein the deponent averred that Respondent's counsel failed to serve Applicant's Counsel with a Judgment Notice as directed by the Court. The deponent further owned up to the error of wrongfully diarizing the Judgment date as 8th December 2025 as distinguished from 22nd October 2025.
10. Having regard to the foregoing, it is evident that errors were committed by Counsel for both the Applicant and the Respondent which resulted in the lapse of time for lodging of an appeal against the trial Court's decision. Consequently, the Court is persuaded and satisfied that the Applicant has provided 'sufficient cause' for not filing the appeal in time within the meaning of **Section 79G** of the **Civil Procedure Act**.

11. Final Orders:

- (i) Leave is hereby granted to the Applicant/Intended Appellant to appeal out of time.***
- (ii) The intended Appellant to file an appeal within 14 days from the date of this Ruling failure to which the Leave allowed shall lapse.***
- (iii) Stay of execution is hereby declined, the trial Court's holding being a negative Order is incapable of being stayed.***
- (iv) No Order as to costs as the subject Application was unopposed.***

Dated Signed and Delivered Virtually On 30th day of April, 2026.

**HON. T. W. OUYA, OGW
JUDGE**

In the presence of:

Ms. Omari holding brief for Ms. Mutunga for Plaintiff/Applicant

No appearance for Respondent

Kelvin/Hamza – Court Assistant