

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYAHURURU

CIVIL APPEAL NO. E035 OF 2024

**MAURINE
ONYIMBO.....APPELLANT/RESPONDENT**

ALUOCH

-VERSUS-

**ESTHER
KAMANJA.....RESPONDENT/APPLICANT**

WANJIKU

RULING

1. Maurine Aluoch Onyimbo appealed against the decision of Hon. C.M. Muhoro SRM, delivered on 23rd September, 2024. The Memorandum of Appeal dated 21st October, 2024 was filed on 25th October, 2024.

2. Through a Notice of Motion dated 8th December, 2025, **Esther Wanjiku Kamanja**, the Respondent seeks orders thus;

1) That the instant appeal be struck out in its entirety for being filed out of time and without leave of court.

2) That the costs of this application be awarded to the Applicant.

3. The application is premised on the ground that the appeal is a non-starter and incurably defective for it was filed out of time and no leave of court was sought or obtained by the

Appellant prior to filing it and it is in the interest of justice that the appeal be allowed.

4. In a response thereto the Respondent, through an affidavit deposed on 22nd October, 2025 states that the judgment was delivered on 23rd September, 2024 and a Memorandum of Appeal dated 21st October, 2024 was filed and the appeal filed and allocated No. E035 of 2024, a matter that was mentioned severally before the Deputy Registrar.
5. That on 15th July, 2025 the Record of Appeal was served upon the Applicant. That she realized the appeal was not filed on 21st October, 2024 but 25th October, 2025, an error occasioned by the staff at the advocate's office. That there were two (2) public holidays namely 10th October, 2024 and 20th October, 2024 which were computed hence time lapsed on 25th October, 2024 at the close of business.
6. That the oversight will cause grave miscarriage of justice. That a mistake of counsel should not be visited upon Litigant as the application, if allowed shall occasion substantial loss and hardship.
7. The application was disposed through written submissions that I have duly considered alongside the application, supporting and opposing affidavits and authorities cited.
8. **Section 79G of the Civil Procedure Act** provides thus;
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.

9. The Respondent was required to file the appeal within 30 days of 23rd September, 2024. In order for the appeal to be admitted out of time there was need to seek leave of the court. In the cited case of **Salat v Independent Electoral and Boundaries Commission & 7 Others [2014] KESC 12 (KLR)** it was held that;

“To file an appeal out of time and seek the court to extend time is presumptive and inappropriate. No appeal can be filed out of time without leave of the court. Such a filing renders the ‘document’ so filed a nullity and of no legal consequence. Consequently, this court will not accept a document filed out of time without leave of the court.”

10. It is admitted that the appeal was filed out of time, but the Respondent urges that the two (2) days were public holidays which should have been excluded in the computation of time of filing documents.

11. Order 50 Rule 4 of the Civil Procedure Rules provides;

Except where otherwise directed by a judge for reasons to be recorded in writing, the period between the twenty-first day of December in any year and the thirteenth day of January in the year next following, both days included, shall be omitted from any computation of time (whether under these Rules or any order of the court) for the amending, delivering or filing of any pleading or the doing of any other act:

Provided that this rule shall not apply to any application in respect of a temporary injunction.

12. The days excluded for computation of time within which the appeal should have been filed are provided. In the instant matter the last day of filing of the appeal was 23rd October, 2024.

13. It is not suggested that the Respondent had some difficult in obtaining judgment or proceedings. It is the advocate's staff who are blamed for the indolence. This is not a satisfactory reason.

14. The only public holiday in issue was 20th October, 2024. The date came earlier than the 30 days window provided by statute and it did not fall on the final day hence it did not affect the 30 days duration.

15. The Respondent also appreciates the error made for she went ahead and filed **Miscellaneous Application No. E052 of 2025**, Notice of Motion dated 15th September, 2025, seeking leave to appeal out of time in order to regularize the position.

16. From the foregoing, the appeal having been filed out of the statutory period and out of the provided time was invalid. Accordingly, it is struck out with costs to the Applicant.

17. It is so ordered.

Dated, signed and delivered virtually this 28th day of April, 2026.

.....
L.N. MUTENDE
JUDGE