



**Kariuki v Kuria (Family Originating Summons E079 of 2025)
[2026] KEHC 6318 (KLR) (Family) (8 May 2026) (Ruling)**

Neutral citation: [2026] KEHC 6318 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
FAMILY ORIGINATING SUMMONS E079 OF 2025**

PM NYAUNDI, J

MAY 8, 2026

BETWEEN

JOYCE WARUGURU KARIUKI APPELLANT

AND

STEPHEN KARIUKI KURIA RESPONDENT

RULING

1. Vide Notice of Motion dated 9th September 2025, presented under Sections 1A, 1B and 79G of the *Civil Procedure Act*, Section 51(1) of the Civil Procedure Rules, and Section 159 of *the Constitution* of Kenya, the applicant seeks an extension of time to file an appeal against the Trial Court's judgment delivered on 19th June 2025.
2. The application is supported by the applicant's affidavit, sworn on the same date. She avers that the delay in filing the appeal was not intentional but arose from her previous counsel's failure to act on instructions. Despite her diligent follow-ups, counsel remained unresponsive, resulting in the lapse of the prescribed time. She urges that she has an arguable appeal with a high probability of success.
3. The respondent has filed grounds of opposition dated 24th November 2025 and a reply affidavit sworn on the same date. The gist of the opposition is that the parties have complied with the judgment, and therefore the intended appeal is compromised. He has presented documents showing that plot No. 348 is registered in his name and that the parties consented to the registration of the motor vehicle KCA 069B.
4. Directions were given that the application be canvassed via written submissions. The applicant has filed submissions on the intended appeal, not on the application before the Court. The respondent did not file submissions.



Analysis And Determination

5. The issue for determination is whether the Court should extend the time for filing the appeal.

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

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.

7. In Machakos High Court Misc Application No. 77 of 2021, Odunga J (as he then was) gave the following directions on how the Court should exercise its discretion in determining whether or not to grant an extension of time-

This being an exercise of judicial discretion, like any other judicial discretion must on fixed principles and not on private opinions, sentiments and sympathy or benevolence but deservedly and not arbitrarily, whimsically or capriciously. The Court's discretion being judicial must therefore be exercised on the basis of evidence and sound legal principles, with the burden of disclosing the material falling squarely on the supplicant for such orders. One of those judicial principles expressly provided for in the above provision is that the applicant must satisfy the Court that he has a good cause for doing so, since as was held in *Feroz Begum Qureshi and Another vs. Maganbhai Patel and Others* [1964] EA 633, there is no difference between the words "sufficient cause" and "good cause". It was therefore held in *Daphne Parry vs. Murray Alexander Carson* [1963] EA 546 that though the provision for extension of time requiring "sufficient reason" should receive a liberal construction, so as to advance substantial justice, when no negligence, nor inaction, nor want of bona fides, is imputed to the appellant, its interpretation must be in accordance with judicial principles. If the appellant had a good case on the merits but is out of time and has no valid excuse for the delay, the court must guard itself against the danger of being led away by sympathy, and the appeal should be dismissed as time-barred, even at the risk of injustice and hardship to the appellant.

8. The principles to guide the Court were set out in the case of *First American Bank of Kenya Ltd vs. Gulab P Shah & 2 Others Nairobi (Milimani) HCCC NO. 2255 of 2000* [2002] 1 EA 65 as

- i. the length of the delay;
- ii. the explanation if any for the delay;
- iii. the merits of the contemplated action, whether the matter is arguable one deserving a day in court or whether it is a frivolous one which would only result in the delay of the course of justice;
- iv. Whether or not the Respondent can adequately be compensated in costs for any prejudice that he may suffer as a result of a favourable exercise of discretion in favour of the applicant

9. The judgment subject to this application was delivered on 19 June 2025. The applicant filed the current application on 10 September 2025. On review, the Court finds that the delay between the delivery of judgment and the presentation of this application is not excessive. Furthermore, the explanation for the delay—namely, previous counsel's failure to act on instructions despite diligent follow-up—is credible and reasonable in the circumstances.



10. It is important to note that the appellant has not disputed the respondent's assertion that compliance with the judgment has taken place, which may compromise the intended appeal. However, after examining both the judgment and the respondent's replying affidavit, it is evident that not all properties in dispute have been addressed or resolved. The judgment has been only partially implemented, leaving certain assets unaccounted for.
11. The draft memorandum of appeal specifically challenges the Magistrate's decision on additional assets that were not fully considered in the original judgment. Based on these factors, the Court concludes that the appeal is not frivolous and presents arguable grounds that warrant consideration and a hearing on the merits.
12. On the last principle, the respondent can be compensated by an award of damages.
13. In the circumstances I will allow the application dated 9th September 2025 and Order as follows-
 - a. The applicant will file and serve memorandum of appeal within 14 days
 - b. Record of Appeal to be filed and served within 90 days
 - c. The respondent will have the costs of application assessed at Kshs 35000 payable within 45 days from the date hereof
 - d. Mention before the Deputy Registrar on 9th September 2026 to confirm compliance and take directions on hearing of the appeal.
 - e. Stay of execution of the Judgment dated 19th June 2025 until 9th September 2026, limited to aspects of the judgment not executed as at the time of the ruling.

SIGNED, DATED AND DELIVERED VIRTUALLY AT NAIROBI THIS 8TH DAY OF MAY 2026.

P. M. NYAUNDI

JUDGE

In the Presence of

Fardosa Court Assistant

Ms. Mbugua for Respondent

John Maina Ndegwa for Applicant

