



REPUBLIC OF KENYA



KENYA LAW
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**Mwaniki v Musyoki (Civil Application E008 of 2025)
[2025] KECA 601 (KLR) (28 March 2025) (Ruling)**

Neutral citation: [2025] KECA 601 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NYERI
CIVIL APPLICATION E008 OF 2025
S OLE KANTAI, JA
MARCH 28, 2025
[IN CHAMBERS]**

BETWEEN

GENANDO NYAGA MWANIKI APPLICANT

AND

JOHN KIILU MUSYOKI RESPONDENT

(An application for leave to file and serve the Notice of Appeal and Record of Appeal out of time against the Judgment of the High Court of Kenya at Embu (Lucy Njuguna, J.) delivered on 16th October, 2024 in H.C. Civil Appeal No. E024 of 2024.)

RULING

1. The only prayers I can entertain as a single Judge in the Motion by the applicant dated 15th January, 2025 are prayers 6, 7 and 8 where it is prayed:
 - “6. That the applicant be granted leave by this Honourable Court to file and serve his Notice of Appeal out of time against the decision of the High Court of Kenya at Embu in Embu High Court Civil Appeal No. E024 of 2024.
 7. That the period in which to appeal be extended for a further period of 60 days if leave to appeal out of time is granted.
 8. That the costs of this Application be provided for.”
2. In grounds in support of those prayers and in a supporting affidavit of Ngola Peter Makau and who says that he is a Legal Officer of the applicant it is said that the applicant is aggrieved by the decision of the High Court on liability and wants to appeal; that the applicant has an arguable appeal with high chances of success; that the delay in filing notice of appeal is excusable and the application has been



brought without undue delay. Further, that the respondents were the plaintiffs in Siakago MCCC E107 of 2021 and were awarded Kshs.357,960 plus costs of the suit; that the applicant appealed that decision to the High Court at Embu in HCCA E024 of 2024; that the appeal was dismissed on 16th October, 2024; that time for filing an appeal has lapsed; that delay in filing an appeal was occasioned by the applicant being unable to obtain proceedings and judgment and delay in obtaining instructions to appeal; that the applicant has an arguable appeal with high chances of success.

3. I have seen hearing notice dated 7th March, 2025 at 11.14 a.m. to: litigation@kibatiaadvocates.com and khanembu@gmail.com notifying parties of hearing date where they were required to file written submissions. I have seen submissions by the applicant but none from the respondent.

4. The applicant submits on reasons for delay that judgment was delivered on 16th October, 2024, that the applicant's advocates promptly took steps to file an appeal:

“... but logistical challenges in obtaining a certified copy of the judgment and unavoidable delays in issuing instructions led to a lapse of time. The delay was minimal and not deliberate, and the Applicant acted properly in filing this application.”

5. It is submitted that the respondents will not suffer any prejudice that cannot be compensated in costs and that denial of the application would infringe on the applicant's constitutional right to appeal.

6. The principles that apply in an application of this nature were well summarized in the case of [Fakir Mobamed v Joseph Mugambi & 2 Others](#) in Civil Application No. 33 of 2004 analyzed factors to be the following:

“The exercise of this court's discretion under Rule 4 has followed a well beaten path since the stricture 'sufficient reason' was removed by amendment in 1985. As it is unfettered, there is no limit to the number of factors the court would consider so long as they are relevant. The period of delay, the reason for the delay, (possibly) the chances of the appeal succeeding if application is granted, the degree of prejudice to the respondent if the application is granted, the effect of the delay on public administration, the importance of compliance with time limits, the resources of the parties, whether the matter raises issues of public importance – are all relevant but not exhaustive factors: See *Mutiso v Mwangi* Civil Application No. Nai. 255 of 1997 (ur), *Mwangi v Kenya Airways Limited* [2003] KLR 486, *Major Joseph Mwereri Igweta v Mulika M'Ethare and Attorney General*, Civil Application No. Nai 8/2000 (ur) and *Murai Wainana* (No. 4) [1982] KLR 38.”

7. Judgment of the High Court of Kenya at Embu was delivered on 16th October, 2024. The applicant says that proceedings of that court and judgment were not availed to him on time. I note that the application before me is dated 15th January, 2025 about 3 months after judgment was delivered. I have not been shown what steps, if any, were taken to obtain proceedings or judgment in order to appeal. The applicant did not even file a notice of appeal within the time required. There is therefore inordinate delay in bringing the application and there is no reasonable explanation for delay. The applicant has not told me why there was difficulty in obtaining instructions to appeal or whether his legal officer, Ngola Peter Mutua, was unable or unavailable to give instructions.

8. The judgment of the lower court, affirmed on appeal by the High Court arose out of a road traffic accident where the respondent was injured. I doubt that an intended appeal would have any possibility of success.

9. The respondent would be prejudiced by delay in enjoying the fruits of his judgment.



10. The application for leave to appeal out of time has no merit. I dismiss it and make no order on costs.

DATED AND DELIVERED AT NYERI THIS 28TH DAY OF MARCH, 2025.

S. ole KANTAI

JUDGE OF APPEAL

I certify that this is a true copy of the original

signed

DEPUTY REGISTRAR

