



REPUBLIC OF KENYA



**KENYA LAW**  
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**Dodhia v Dodhia (Civil Application E525 of 2024)  
[2025] KECA 1325 (KLR) (18 July 2025) (Ruling)**

Neutral citation: [2025] KECA 1325 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAIROBI  
CIVIL APPLICATION E525 OF 2024  
DK MUSINGA, JA  
JULY 18, 2025**

**BETWEEN**

**RACHANA PRADEEP DODHIA ..... APPLICANT**

**AND**

**PRADEEP MEGHJI DODHIA ..... RESPONDENT**

*(Being an application for extension of time to file an appeal out of time arising from the Ruling of the High Court of Kenya at Nairobi (Riechi, J.) delivered on 14th August 2024 in H.C. Divorce Cause No. 32 of 2011)*

**RULING**

1. The applicant's notice of motion dated 15<sup>th</sup> October 2024 seeks, in the main, leave to file an appeal out of time from the judgment of Riechi, J., in Milimani High Court Divorce Cause No 32 of 2011 delivered on 14<sup>th</sup> August 2024. In her affidavit in support of the application, the applicant states, inter alia, that the ruling in the aforesaid matter was delivered on 14<sup>th</sup> August 2024 in the absence of her former advocates; that her former advocates failed to notify her about the judgment; that on 7<sup>th</sup> October 2024, after making several enquiries which did not elicit any feedback from her former advocates, she visited their offices to find out the position of the matter, and that is when she learnt that the judgment had already been delivered on the aforesaid date, and by then the time fixed for filing a notice of appeal had already lapsed.
2. Being dissatisfied with the ruling of Riechi, J. which dismissed her claim for maintenance by her former husband, the respondent, she engaged her current advocates, Owuor Gerry & Company, and instructed them to prefer an appeal to this Court. The applicant urges this Court not to punish her for the mistakes of her former advocates. The applicant contends that her intended appeal raises substantial arguable issues and she would be prejudiced if she is not allowed to pursue the intended appeal.



3. The application is opposed. In his replying affidavit, the respondent states that the applicant has a track record of changing advocates at the eleventh hour or appearing in person in the final stages of her various court matters; that the intended appeal is not arguable and the applicant has not demonstrated how she will suffer substantial loss or damage and prejudice if her application is not allowed; that on the other hand, the respondent who has a heart problem and diabetes, will be affected healthwise by any continuing litigation; and that the respondent will be greatly prejudiced if the application is granted as the parties have been divorced since 17<sup>th</sup> June 2018, and there must be an end to litigation. For those reasons, the respondent urges this Court to dismiss the application.
4. I have considered the application and the respondent's submissions on record. The applicant did not file any submissions.
5. The principles that guide this Court in considering an application of this nature under rule 4 of the Court's Rules are well settled. The Court will consider factors such as the period of the delay, the reasons for the delay, the chances of the appeal succeeding, the degree of prejudice that is likely to be occasioned to the respondent if the application is granted, and whether the matter raises issues of public importance, among others. See *Edith Gichugu Koine v Stephen Njagi Tboithi* [2014] eKLR.
6. In *Nicholas Kiptoo Korir Arap Salat v IEBC and 7 others* [2014] eKLR, the Supreme Court set out various principles that a court should consider in exercise of its discretion in an application of this nature. The Court held:

“The underlying principles a court should consider in exercise of such discretion should include:

  - a. Extension of time is not a right of a party. It is an equitable remedy that is only available to a deserving party at the discretion of the Court;
  - b. A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the court;
  - c. Whether the court should exercise the discretion to extend time, is a consideration to be made on a case-to-case basis;
  - d. Whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the Court;
  - e. Whether there will be any prejudice suffered by the respondents if the extension is granted;
  - f. Whether the application has been brought without undue delay.”
7. For this Court to exercise its discretion in favour of the applicant, it has to be satisfied that the delay in filing the intended appeal is well explained. In her affidavit in support of the application, the applicant faults her former advocates, who are not disclosed, for failing to notify her about the delivery of the impugned ruling. The applicant has not annexed to her affidavit any communication that she had with her former advocates regarding the matter in question, or enquiry as to the date of delivery of the ruling. The applicant has not sufficiently explained what she did between 14<sup>th</sup> August 2024 when the ruling was delivered and 7<sup>th</sup> October 2024 when she filed the application. I would have expected to see correspondence exchanged between the applicant and her former advocates regarding this issue.



8. In *Habo Agencies Limited v Wilfred Odhiambo Musingo* [2015] eKLR, this Court stated as follows:
- “It is not enough for a party in litigation to simply blame the advocates on record for all manner of transgressions in the conduct of the litigation. Courts have always emphasized that parties have a responsibility to show interest in and to follow up their cases, even when they are represented by counsel.”
9. In my view, therefore, the applicant has not sufficiently, explained the delay in filing the notice of appeal.
10. Regarding the chances of success of the intended appeal, I have perused the impugned ruling as well as the Deed of Settlement dated 28<sup>th</sup> April 2016 between the parties. It is not in dispute that the applicant and the respondent divorced vide a judgment dated 17<sup>th</sup> June 2018, and prior to that they had entered into the aforesaid Deed of Settlement whereby the applicant was paid Kshs.6 million by the respondent and the parties agreed to rest the matter of her maintenance by the respondent. The respondent has since remarried and has another family. The trial court established that both parties are employed and have modest income.
11. Having perused the impugned ruling and the proposed grounds of appeal, I entertain doubts about arguability of the intended appeal.
12. Thirdly, although a party has a constitutional right of appeal, except where such right is limited by law, that right must be exercised within the stipulated period of time, and in instances where there has been delay in exercising that right, this Court has to consider the nature of prejudice that the respondent stands to suffer if an application for extension of time is granted. In this case, the parties, having divorced for quite some time and the respondent is not in good state of health, continued litigation between the parties, and more so where the chances of success of the intended appeal are doubtful, it would be prejudicial to the respondent to allow such an application, as that may aggravate his state of health since litigation is stressful.
13. All in all, I find this application unmeritorious and dismiss it. However, each party shall bear its own costs of the application.

**DATED AND DELIVERED AT NAIROBI THIS 18<sup>TH</sup> DAY OF JULY 2025.**

**D. K. MUSINGA (PRESIDENT)**

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**JUDGE OF APPEAL**

I certify that this is a true copy of the original.

Signed

Deputy Registrar

