



**Gachuki v Kiunyu (Civil Application E522 of 2024)
[2025] KECA 1316 (KLR) (18 July 2025) (Ruling)**

Neutral citation: [2025] KECA 1316 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPLICATION E522 OF 2024
DK MUSINGA, JA
JULY 18, 2025**

BETWEEN

JOSEPH KIHURA GACHUKI APPLICANT

AND

DANIEL KIUNYU RESPONDENT

(Being an application for extension of time to file a notice of appeal arising from the judgment of the High Court of Kenya at Kiambu (Kassan, J.) delivered on 8th July 2024 in Comm Suit No. E493 of 2022)

RULING

1. The applicant's notice of motion dated 7th October 2024 seeks leave to file a notice of appeal out of time from the ruling and orders of Kassan, J. issued on 8th July 2024 in Kiambu ACCA No. E007 of 2022. The applicant also seeks stay of execution of the said judgment, but this prayer cannot be considered in a single judge application. I will therefore deal with the application for extension of time only.
2. Although the applicant refers to a ruling that was delivered on 8th July 2024, the record actually shows that it was a judgment. I will disregard that technical error and deal with the application substantively. In his affidavit in support of the application, the applicant states that the judgment that he seeks to appeal from was scheduled to be delivered on 3rd July 2024, and that is the date that is shown on the portal. However, on that day, the judgment was not ready and the portal indicated that it would be delivered on 14th August 2024. That notwithstanding, it was delivered on 8th July 2024 in his absence and without any advance communication. However, the judgment was subsequently read again on 14th or 19th August 2024. By the time he became aware of it, the period of filing a notice of appeal had lapsed.
3. The applicant contends that he has an arguable appeal with high chances of success, and unless this application is allowed, he stands to suffer irreparable loss and prejudice as he will be unable to exercise



his right of appeal. The applicant has attached to his affidavit a draft memorandum of appeal that contains 8 grounds of appeal.

4. The application is opposed. The respondent states that the applicant is seeking to appeal from a non-existent decision as there was no ruling that was delivered on 8th July 2024, what was delivered was a judgment. That notwithstanding, the respondent states that the applicant was aware that the trial judge, who was undertaking a rapid response initiative in the High Court at Kiambu, had given the judgment date as 3rd July 2024, and had he attended court on that day, he would have learnt that the judgment had been deferred to 8th July 2024; that the applicant is not forthright as he does not state how or when he became aware of the judgment and why it took him three months to make this application.
5. Regarding the intended appeal, the respondent argues that the draft memorandum reveals that the proposed second appeal is on matters of fact and not grounds of law as required. In his view, the application is unmeritorious.
6. I have considered the application, the replying affidavit and the written submissions made by the parties. In an application of this nature, the factors that guide the Court in exercising its discretion as to whether to grant leave or not include 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 vs Stephen Njagi Thoithi* [2014] eKLR.
7. There is no dispute that the date for delivery of the impugned judgment was scheduled to be 3rd July 2024, but on that day the judgment was not ready. It is also not in dispute that the portal showed that the judgment would be delivered on 14th August 2024, but it was however delivered on 8th July 2024. There is no indication that the applicant and/or his advocate were aware of that earlier date of its delivery.
8. Whereas the applicant may not have been aware that the impugned judgment was delivered on 8th July 2024, he has not indicated whether he attended court or checked the court record on 14th August 2024 to determine whether the judgment was actually delivered. The applicant does not say what he did between 14th August 2024 and 7th October 2024 when he filed this application. That delay has not been explained at all. This Court has severally held that every delay in filing an appeal must be sufficiently explained. Extension of time is not a right of any party; it is an equitable remedy that can only be granted to a deserving party who has advanced sufficient reason(s) for not complying with set timelines as per the *Court Rules*. A party who seeks for extension of time has the burden of laying a basis to the Court's satisfaction, and without such explanation, the Court would have no basis for exercising its discretion in favour of an applicant. See *Nicholas Kiptoo Korir Arap Salat vs IEBC & 7 others* [2014] eKLR.
9. As no reasonable explanation for the delay between 8th July 2024 and 7th October 2024 has been advanced, I am unable to exercise my discretion in favour of the applicant. And since there is no reasonable explanation for that delay, I need not go into the other considerations like whether the intended appeal is arguable, and whether the respondent will suffer any prejudice if the application is allowed.
10. Consequently, this application is without merit and I hereby dismiss it with costs to the respondent.

DATED AND DELIVERED AT NAIROBI THIS 18TH DAY OF JULY 2025.

D. K. MUSINGA (PRESIDENT)

.....

JUDGE OF APPEAL



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

Signed

DEPUTY REGISTRAR.

