



**Kweri v Beehive Media Limited; Capwell Industries Limited
(Interested Party) (Petition 321 of 2021) [2025] KEHC 664 (KLR)
(Constitutional and Human Rights) (31 January 2025) (Ruling)**

Neutral citation: [2025] KEHC 664 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CONSTITUTIONAL AND HUMAN RIGHTS**

PETITION 321 OF 2021

EC MWITA, J

JANUARY 31, 2025

BETWEEN

LUBURUWEN LASANGURU KWERI PETITIONER

AND

BEEHIVE MEDIA LIMITED RESPONDENT

AND

CAPWELL INDUSTRIES LIMITED INTERESTED PARTY

RULING

1. The petitioner has sought extension of time to file an appeal out of time against the judgment delivered on 31st march 2023. In that judgment, the court stayed the petitioner’s claim on violation of his dignity guaranteed under article 28 of *the Constitution* pending determination by the Office of the Data Protection Commission (ODPC) on the claim of violation of privacy guaranteed under article 31.
2. The application is based on the grounds on its face, the supporting affidavit and written submissions. The petitioner states that in its determination, the ODPC held that it did not have jurisdiction to make a declaration that the respondent’s action amounted to a breach of privacy as this is the preserve of the court to interpret *the constitution*. This, the petitioner contends, left him without recourse, the court having earlier declined to pronounce itself on the violation of his privacy.
3. According to the petitioner, the Supreme Court decision in Nicholus v Attorney General & 7 others; National Environmental Complaints Committee & 5 others, (Interested Parties) Petition No. E007 of 2023 [2023] KESC 113(KLR) laid down the position that a party who raises constitutional violation



issues should not be relegated back to tribunals as the High Court has jurisdiction under Article 22 of *the constitution*.

4. The petitioner asserts that he is aggrieved with the court's decision to refer issues regarding violation of article 28 and 31 to ODPC and the delay in appealing was not intentional. He has urged the court to extend time for him to file an appeal.
5. The respondent has opposed the application through a replying affidavit and written submissions. The respondent's position is that although the court has discretion to enlarge time, the discretion should be exercised judiciously. The respondent relies on the decision in *Kariuki v CIC General Assurance [2022] KECA 1166(KLR)* that the power of discretion to condone delay should be exercised judiciously and by recording reasons.
6. The respondent has again relied on *Nicolus Kiptoo Arap Salat v IEBC & 7 others [2014] eKLR*, that extension of time is not a right of a party but an equitable remedy that is available to a deserving party. The respondent maintains that the petitioner has not met the requisite threshold for extending time.
7. On whether the delay is reasonable, the respondent argues to the contrary and relies on the decision in *Aeronautical Society of Kenya & another v Maina [2023] KECA 238 (KLR)* that extension of time being a creature of equity one can only enjoy it if he acts equitably.
8. According to the respondent, the judgment was delivered on 31st March 2023 and time for appealing lapsed on 14th April 2023. The petitioner appealed against the determination by the ODPC, but the appeal was dismissed on 28th June 2024 in *HCCA E 895 of 2023*. The respondent relies on the decision in *Stanely Kahoro Mwangi & 2 others v Kanyamwi Trading Company Limited [2015] eKLR* on the principles that guide the court in an application for extension of time.
9. The interested party did not file any response. However, counsel supports the position taken by the respondent and urges that the application be dismissed.
10. I have considered the application, the response and arguments by counsel for the parties. The applicant has sought extension of time to file an appeal to the Court of Appeal out of time. The applicant filed a petition seeking declaration of violation of dignity and privacy guaranteed by articles 28 and 31 of *the constitution*.
11. In its judgment delivered on 31st March 2023, the court referred the issue of violation of privacy to the ODPC and stayed the claim on violation of dignity. The ODPC determined that the office did not have jurisdiction to issue declarations on violation of privacy as that is the mandate of this court.
12. The applicant has now approached this court seeking extension of time to appeal against the decision to refer the issue of privacy to the ODPC, arguing that he was left without a remedy. The respondent has opposed this application arguing that there has been delay given that the judgment was delivered on 31st March 2023; that discretion to extend time should be exercised judiciously and that extension of time being a creature of equity, one can only enjoy it if he acts equitably. The interested party supports the respondent's position.
13. There is no doubt that judgment in this matter was delivered in march 2023. It is also true that any judicial discretion must be exercised judiciously. However, in this matter, the judgment differed the applicant's claim on privacy to the ODPC who determined that it did not have jurisdiction. The claim for violation of dignity was also not determined.



14. On the basis of the above reason, the applicant wishes to appeal against the court's judgment. The applicant has pointed out that the Supreme Court has made the position clear that claims for violation of rights and fundamental freedoms should not be relegated to tribunals.
15. The petitioner did not go to sleep following that judgment. He went where the court sent him, but the ODPC determined that it had no jurisdiction to issue a declaration on violation of privacy. Meanwhile, petitioner's claim on violation of dignity has not been determined. It is for that reason that he beseeches this court to extend time for him to approach the Court of Appeal on whether the court could have differed the issue of violation of privacy to the ODPC.
16. Section 7 of the Court of Appeal Act allows this court to extend time for filing a notice of appeal. The section provides as follows:

The High Court may extend the time for giving notice of intention to appeal from a judgment of the High Court or for making an application for leave to appeal or for a certificate that the case is fit for appeal, notwithstanding that the time for giving such notice or making such appeal may have already expired.
17. This court has unfettered discretion to extend time for giving notice of appeal. It has, however, to be satisfied that the delay in filing the notice of appeal was not inordinate or deliberate.
18. As already alluded to, the applicant was referred the ODPC by the court but did not get a remedy as the ODPC declined holding that it did not have jurisdiction to issue a declaration on violation of privacy. The petitioner's claim on violation of dignity was not determined. The petitioner wants to approach the Court of Appeal for determination of the correctness of decision to refer the issue of violation of privacy to the ODPC.
19. It is the view of this court, that the interest of justice demand that the applicant be allowed to access the Court of Appeal so that he can have a second opinion on the issue. Declining to grant extension of time would leave the applicant without a remedy having spent quite considerable time in court yet he walks away without knowing whether the respondent was right or wrong. Declining to extend time would also close this case on technicalities. In the circumstances, this court is inclined towards allowing the application.
20. Consequently, and for the above reasons, the application dated 13th February 2024 is allowed. The applicant is granted extension of time to file a Notice of Appeal. The Notice of Appeal be filed and served within 14 days. There will be no orders as to costs.

Orders accordingly.

DATED AND DELIVERED AT NAIROBI THIS 31ST DAY OF JANUARY 2025

E C MWITA

JUDGE

