



**Gichuhi v Munyambu (Family Miscellaneous Application
E007 of 2024) [2025] KEHC 4080 (KLR) (27 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 4080 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT THIKA
FAMILY MISCELLANEOUS APPLICATION E007 OF 2024**

**FN MUCHEMI, J
MARCH 27, 2025**

BETWEEN

MARY WAITHERA GICHUHI APPLICANT

AND

YVONNE NDUHI MUNYAMBU RESPONDENT

RULING

1. The application dated 7th June 2024 seeks for orders of leave to file an appeal out of time against the ruling in Gatundu CM Succession Cause No. E023 of 2021 delivered on 26th April 2024. The applicant further seeks for orders of stay of execution of the said ruling.
2. The respondent opposed the application and filed an undated Replying Affidavit on 17th July 2024.

Applicant's Case

3. The applicant states that the ruling in Gatundu CM Succession Cause No. E023 of 2021 was delivered on 26th April 2024 whereas the said court dismissed her application for Revocation of grant. Being aggrieved with the said judgment, the applicant is desirous of lodging an appeal against the said ruling but the statutory period has already lapsed.
4. The applicant states that the delay in filing the appeal was occasioned by the fact that she was experiencing network challenges with the e-filing system and as such the Memorandum of Appeal was not reflecting or uploading on the system. The applicant argues that the delay is not inordinate and it would be in the interests of justice to allow her application.
5. The applicant avers that the application has been brought in good faith and that the intended appeal has high chances of success. The applicant argues that she ought to be given a chance to ventilate her issues on appeal as she would be rendered homeless if she is evicted from her matrimonial home.



The Respondent's Case

6. The respondent states that the applicant has not given sufficient reasons why she delayed to file her appeal within the stipulated time. The applicant has attached a photograph in support of her allegation that the delay was caused by network issues in the e-filing system. The single photograph is not clear on the time or the date of the said network issue.
7. The respondent states that the applicant has not shown this court any steps she took in her efforts to file the appeal, for example, visiting the relevant registry or sending an email to the registry to the registry have the matter filed from thee. The respondent states that the applicant cannot claim that the delay was occasioned by network issues as that would mean that the advocates on record have not filed nor appeared in court since the day of the alleged network issues. The respondent further states that network issues cannot go on for 30 days in the CTS system that is used by thousands of advocates and litigants throughout all working days of the week to file document and to check on information on their cases.
8. The respondent avers that the draft memorandum of appeal does not contain any triable issues. The respondent states that she ought to be allowed to enjoy the fruits of the judgment without having further interference from the applicant as she has no locus to file the instant suit.
9. Parties put in written submissions.

The Applicant's Submissions

10. The applicant relies on Section 79G of the *Civil Procedure Act* and submits that the delay was caused by circumstances beyond her control given that the e-filing system was having network issues and therefore she was unable to upload the memorandum of appeal despite several attempts. The applicant submits that the delay in filing the application was of only two (2) days after the expiry of the thirty (30) days statutory period for lodging an appeal. As such, it is argued that there was no inordinate delay. The applicant argues that she ought to be given a chance to ventilate her grievances arising from the ruling rendered by the trial court for the ends of justice to be met.
11. The applicant submits that the respondent's assertion that she ought to have physically presented the memorandum of appeal for filing at the registry is insensitive on the basis the advocates who prepared the reply are well aware that the registries no longer accept hard copies for filing. Further, the respondent alludes that the network issues would mean that her counsel has not been appearing in court. The applicant submits that the teams app and the e-filing system are two different platforms with different servers thus there is no correlation, an issue with one does not mean there would be an issue with the other.
12. The applicant relies on the case of *Stecol Corporation Limited vs Susan Awuor Mudemb [2021] eKLR* and submits that she will be greatly prejudiced if not granted an opportunity to ventilate her grievances through the intended appeal which has high chances of success. The applicant further submits that no prejudice would be occasioned by the respondent given that she is the biological daughter to the deceased and as a matter of right is entitled to an inheritance from her father's estate.

The Respondent's Submissions

13. The respondent relies on Section 79G of the *Civil Procedure Act* and submits that the applicant has not provided sufficient reasons as to why her application ought to be allowed as it is impossible that the e-portal system had failed for three whole days and the judiciary did not issue a notice with regard the down time and that every advocate failed to file their matters during the three days.



14. The respondent submits that the memorandum of appeal does not raise any triable issues that had not been dealt with sufficiently in the lower court and allowing the appeal will amount to wasting the court's time as it is a frivolous suit which is costing her. Furthermore, the applicant has not shown the court that there might be new evidence in place and further by her own admission, the trial court made its decision solely based on the evidence provided by both parties.
15. The respondent relies on the cases of *Nicholas Kiptoo arap salat vs IEBC & 7 Others* [2014] eKLR and *Tonui vs National Bank of Kenya (Miscellaneous Civil Appeal E002 of 2022)* [2022] KEHC 2977 (KLR) (20 June 2022) (Ruling) and submits that the intended appeal raises no triable issues and thus allowing the application will only be an academic exercise and a waste of the court's time.

The Law

Whether the court should exercise its discretion to grant the applicant leave to file her appeal out of time;

16. Section 79G of the *Civil Procedure Act* states:-

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 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.

17. It is clear from the wording of section 79G of the *Civil Procedure Act* that before the court considers extension of time, the applicant must satisfy the court that that he has good and sufficient cause for filing the appeal out of time. This principle was enunciated in the case of *Diplack Kenya Limited vs William Muthama Kitonyi* [2018] eKLR an applicant seeking enlargement of time to file an appeal or admission of an already filed appeal must show that he has a good cause for doing so.
18. The Supreme Court in the case of *Nicholas Kiptoo Korir arap Salat vs IEBC and 7 Others* [2014] eKLR enunciated the principles applicable in an application for leave to appeal out of time. The court stated inter alia that:-

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

- a. Extension of time is not a right of any 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 by 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 respondent if the extension is granted;



- f. Whether the application has been brought without undue delay.
19. Similarly in the case of Paul Musili Wambua vs Attorney General & 2 Others [2015]eKLR, the Court of Appeal in considering an application for extension of time and leave to file the Notice of Appeal out of time stated the following:-
- “.....it is now settled by a long line of authorities by this court that the decision of whether or not to extend the time for filing an appeal the Judge exercises unfettered discretion. However, in the exercise of such discretion, the court must act upon reason(s) not based on whim or caprice. In general the matters which a court takes into account in deciding whether or not to grant an extension of time are; the length of delay, the reason for the delay, the chances of the appeal succeeding if the application is granted, the degree of prejudice to the respondent if the application is granted.”
20. Applying the above principles to the present case, the judgment was delivered on 26th April 2024 and the current application filed on 13th June 2024. This is approximately eighteen (18) days outside the time limited for filing an appeal. The applicant has attributed her delay to network challenges she experienced with the judiciary e-filing system.
21. On perusal of the record, the applicant has annexed one photo of the e-filing dashboard. which does not show the time or the date the applicant was on the system. Furthermore, the applicant claims that she tried to upload her memorandum of appeal on several occasions, but she has only annexed one photograph and the times or period she was on the portal have not bn given either by dates or time. It is not usual to have the court e-filing system down. Even if it was off for 3 days or so, a notice would have bn given by the Judiciary to that effect. The applicant did not send an e-mail or a letter to the court complaining of the problem or even visit the court registry physically to ascertain what the problem was and how to sort it out. The applicant was late with about 18 days which is about half the period allowed for filing an appeal.
22. It has been held by superior courts that delay of about two months could be acceptable with good reasons. Due to the brevity of the period of delay, this court is of the considered view that the application be positively considered but the applicant be denied costs of the application.
23. Consequently, this application is hereby allowed with costs of KSh.20,000/= payable to the respondent by the applicant within 30 days.
24. It is hereby so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT THIKA THIS 27TH DAY OF MARCH 2025.

F. MUCHEMI

JUDGE

