



Maingi v Murimi (Civil Appeal E031 of 2024) [2025] KEHC 5032 (KLR) (30 April 2025) (Ruling)

Neutral citation: [2025] KEHC 5032 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
CIVIL APPEAL E031 OF 2024
DKN MAGARE, J
APRIL 30, 2025**

BETWEEN

JAMES NGORIKI MAINGI ALIAS JAMES NGURIKI MAINGI APPLICANT

AND

JEREMIAH WILSON MURIMI RESPONDENT

RULING

1. The ruling seeks to review the court's decision to dismiss the appeal summarily for being filed out of time. The main ground was that the appellant had been granted leave to file out of time. They filed leave upon being granted the said leave, which the court failed to consider. They also stated that the advocates failed to appear in court as they were under the impression that the matter was before the Deputy Registrar and not the court.
2. They admitted that they erroneously failed to attach the order granting leave to the appeal, hence the court reached an erroneous decision. Reliance was placed on the decision of Republic v Council of Legal Education & 2 others Ex Parte Mitchell Njeri Thiongo Nduati [2019] eKLR.
3. They stated they have shown sufficient cause. Reliance was placed on the Supreme Court of India decision of Parimal v Veena, as per Dr. B.S. Chauhan, J, where the court stated as follows:

“Sufficient Cause” is an expression which has been used in large number of Statutes. The meaning of the word “sufficient” is “adequate” or “enough”, in as much as may be necessary to answer the purpose intended. Therefore, word “sufficient” embraces no more than that which provides a platitude which when the act done suffices to accomplish the purpose intended in the facts and circumstances existing in a case and duly examined from the view point of a reasonable standard of a cautious man. In this context, “sufficient cause” means that party had not acted in a negligent manner or there.

4. They beseeched the court to allow the application dated 21.11.2025 (in reality it is dated 25.11.2024).



5. The application was not opposed.

Analysis

6. What transpired is fairly straightforward. The appellant filed an appeal out of time. However, he had been granted leave to do so. The said leave was not filed in the court file. The Memorandum of Appeal also did not indicate that leave was granted to the Appellant. The court perused the file and struck out the suit for being filed out of time. The application was made, showing leave was granted, but not disclosed to the court.

7. The court could thus not make any other order. However, there is sufficient cause, being that leave had been granted. In the case of UAP Insurance Company Limited v Ramadhan (Civil Appeal E103 of 2023) [2025] KEHC 1942 (KLR) (14 February 2025) (Ruling) Neutral citation: [2025] KEHC 1942 (KLR) Ngaah J stated as follows:

What appears to have transpired, and the applicant has admitted as much, is that when the appeal was eventually filed, the applicant did not include in the appeal record, the order granting leave for extension of time and, therefore, in dismissing the appeal summarily, the court proceeded on the assumption that the appeal had been filed out of time without leave.

8. This is essentially the *raison d'être*; the record must contain the order granting leave and the order granting leave to file an appeal out of time. At the very least, the memorandum of appeal should have at its foot an averment indicating that leave was granted on a specific date in a named case. This was not done. The error, however, is noted. The court cannot drive out parties from the seat of justice. The court therefore allows the application.

9. The Court of Appeal in the case of Farah Awad Gullet v CMC Motors Group Limited [2018] KECA 158 (KLR) had this to say:

It is our finding that the position in law is that costs are at the discretion of the court seized up of the matter with the usual caveat being that such discretion should be exercised judiciously meaning without caprice or whim and on sound reasoning secondly that a court can only withhold costs either partially or wholly from a successful party for good cause to be shown.

10. The application is thus allowed with each party bearing its costs as the same was caused by the Appellant's omission.

Determination

11. Therefore, the court makes the following orders: -

- a. The application dated 25.11.2024 is allowed.
- b. Each party to bear their own costs.
- c. The matter be placed before the court for admission of the appeal.
- d. Directions to be given shortly.

DELIVERED, DATED AND SIGNED AT NYERI ON THIS 30TH DAY OF APRIL, 2025.

Ruling delivered through Microsoft Teams Online Platform.

KIZITO MAGARE



JUDGE

Represented by:-

Wagiita Theuri & Co. Advocates for the Appellant/Applicant

Mithega & Kariuki Advocates for the Respondent

Court Assistant – Michael

