



**Nyaugenya Services Limited & another v Pamba (Miscellaneous Application  
E001 of 2025) [2025] KEHC 5069 (KLR) (25 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 5069 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BUSIA  
MISCELLANEOUS APPLICATION E001 OF 2025**

**WM MUSYOKA, J**

**APRIL 25, 2025**

**BETWEEN**

**NYAUGENYA SERVICES LIMITED ..... 1<sup>ST</sup> APPLICANT**

**PETER OWINO KACHERO ..... 2<sup>ND</sup> APPLICANT**

**AND**

**PRACSIDIS NABWIRE PAMBA ..... RESPONDENT**

**RULING**

1. The application, dated 30<sup>th</sup> January 2025, is for leave to file appeal out of time, and for stay of execution of the judgement and decree in Busia CMCCC No. E377 of 2021, of 15<sup>th</sup> October 2024.
2. The affidavit, sworn in support of the application, is by the 2<sup>nd</sup> applicant, Peter Owino Kachero. He avers that after the judgement was delivered on 15<sup>th</sup> October 2024, his Advocates, notified his insurers, Directline Assurance Company Limited, of the same, vide a letter of 18<sup>th</sup> October 2024. By the time the said insurers communicated instructions to the Advocates, by a letter dated 22<sup>nd</sup> January 2025, to go ahead and appeal, on quantum, the time for filing appeal had lapsed. It is claimed that there is an appeal on merit which would succeed. It is further averred that execution proceedings have commenced in the earnest, and that the applicant was ready to provide a bank guarantee as security for costs.
3. In support, several documents have been attached. The judgement of 15<sup>th</sup> October 2024 is one of them. The letters of 18<sup>th</sup> October 2024 and 22<sup>nd</sup> January 2025 are the other. There is a copy of a draft memorandum of appeal, and an application for renewal of banking facilities.
4. A response was filed to the application, vide a replying affidavit by Okwaro Winnie Anono, the Advocate for the respondent, sworn on 7<sup>th</sup> February 2025. It is essentially averred that sufficient cause has not been shown for the delay in filing appeal.



5. Directions were given on 18<sup>th</sup> February 2025, for disposal of the application by written submissions. Both sides have complied, by filing written submissions, which I have read and noted the arguments made.
6. The only issue for me to determine is whether the application is merited.
7. The provision that the applicants rely on, in his pursuit of leave, is section 79G of the [Civil Procedure Act](#), which provides:
 

“Time for filing appeals from subordinate courts

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 to the appellant 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.”
8. The court has the discretion to extend time for filing an appeal, but the exercise of that discretion is not automatic. Sufficient cause must be shown, to warrant exercise of the discretion. The principles were laid out in *Nicholas Kiptoo arap Salat v Independent Electoral and Boundaries Commission & 7 others* [2014] eKLR (Ibrahim & Wanjala, SCJJ), a decision of the Supreme Court, premised largely on the Supreme Court Rules, but of relevance to the exercise of similar discretion under the [Civil Procedure Act](#) and Rules.
9. The points made there are that the extension of time is not a matter of right, for it is an equitable remedy, available only to a deserving party; a party seeking exercise of the discretion in its favour must endeavour to demonstrate that they deserve it; the discretion would be exercised on a case to case basis; where delay is alleged to be reasonable, then the reasonableness of the delay must be explained; it ought to be demonstrated that the other parties would not be prejudiced by the exercise of the discretion; and the application must be filed without undue delay.
10. The explanation, herein, for the delay in filing appeal, is that the instructing client was notified of the delivery of the judgement within 3 days of its delivery but delayed in relaying the instructions to appeal. The time to appeal lapsed on or about 15<sup>th</sup> November 2024, and the instructions to file appeal were borne in a letter written on 22<sup>nd</sup> January 2025, and the application for leave was filed on 3<sup>rd</sup> February 2025.
11. Has the delay been adequately explained? I do not think so. The affidavit in support of the application was sworn by the 2<sup>nd</sup> applicant, and not by an officer of his insurers, from whom the instructions were expected. The delay was not caused by the 2<sup>nd</sup> applicant, it came from his insurers. The insured has no capacity to explain delay by his insurer, and that delay can only best be explained by the person causing it. There is no such explanation. The affidavit by the 2<sup>nd</sup> applicant merely gives a narration about what he is privy to, and about the letter the insurers wrote to its Advocates instructing them to file appeal. The 2<sup>nd</sup> applicant does not even aver as to how he came by that information.
12. The said affidavit gives no explanation as to why the insurers did not act between 18<sup>th</sup> October 2024, when it was informed of the judgement, and 22<sup>nd</sup> January 2025, when it wrote the letter communicating the instructions to appeal. Between 15<sup>th</sup> November 2024, when the time to file appeal lapsed, and 22<sup>nd</sup> January 2025, when the insurers gave instructions, was 67 days. The failure to act within that duration has not been explained at all.



13. I note that the Advocates on record tried to notify the insurers of the judgement soon after its delivery. Extension of time to file appeal is discretionary. I am tempted to exercise that discretion, in this case, in favour of the applicants, on grounds that the delay, although unexplained, was not so inordinate as to be deemed unreasonable.
14. In *Gerald M'Limbine v Joseph Kangangi* [2008] eKLR (Emukule, J), the court construed section 79G of the *Civil Procedure Act*, by stating that that provision does not provide for leave to appeal out of time, but rather for admission of appeals out of time, which would presuppose that a party, approaching the court, under section 79G of the *Civil Procedure Act*, should first file an appeal out of time, and then ask the court to admit that appeal. It was argued that a court ought not exercise discretion, to extend time to admit an appeal, before it has perused the appeal filed out of time, to assess, under section 79B of the *Civil Procedure Act*, whether the same ought to be admitted or not.
15. The applicants have not filed an appeal out of time, which it would be asking me to admit out of time. However, a draft memorandum of appeal has been annexed, whose grounds, in my opinion, do not raise idle arguments.
16. On the matter of grant of stay of execution of the impugned judgement, the respondent has not vigorously litigated on whether such stay ought not be granted, ostensibly as it would appear to be tied to grant of leave to appeal out of time. On the matter of the applicants suffering substantial loss, should stay not be granted, I note that the respondent has not made it an issue. I shall not have to consider whether stay of execution ought to be granted and whether substantial loss would be suffered.
17. In view of everything said above, I will, as I hereby do, allow the application, dated 30<sup>th</sup> January 2025. Time to appeal is extended by 30 days from the date of this ruling. There shall be a stay of execution of the judgement and decree, in Busia CMCCC No. E377 of 2021, of 15<sup>th</sup> October 2024, on condition that the applicant either deposits the total judgement sum in court, or provides a bank guarantee for the said amount, within the next 30 days of the date of this ruling. The stay order shall lapse automatically should the condition above not be met. The stay order shall also lapse automatically, should the appeal not be filed within the 30 days.
18. The application, dated January 30, 2025, is disposed of in the terms set out above. Orders accordingly.

**DELIVERED VIA EMAIL, DATED AND SIGNED, AT BUSIA, THIS 25<sup>TH</sup> DAY OF APRIL 2025.**

**W. MUSYOKA**

**JUDGE**

Arthur Etyang, Court Assistant.

Advocates

Ms. Theldred Wesonga, instructed by Kimondo Gachoka & Company, Advocates for the applicants.

\*\*Ms. Winnie Anono, instructed by Mukisu & Company, Advocates for the respondent.

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