



Maina v Mwangiri & 2 others (Civil Miscellaneous Application E004 of 2024) [2025] KEHC 9602 (KLR) (26 June 2025) (Ruling)

Neutral citation: [2025] KEHC 9602 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAROK
CIVIL MISCELLANEOUS APPLICATION E004 OF 2024
CM KARIUKI, J
JUNE 26, 2025**

BETWEEN

BOVIAN MACHUKI MAINA APPLICANT

AND

FRANCIS MUNYAO MWAGIRI 1ST RESPONDENT

TABITHA MORAA MOKAY 2ND RESPONDENT

DIAMOND TRUST BANK KENYA LIMITED 3RD RESPONDENT

RULING

1. By application dated 20/3/2024 the Applicant seek leave to appeal out of time and stay of trial court decree pending hearing and determination of the appeal.
2. The same is based on the grounds on the face of the application and the affidavit of Cynthia Kemunto sworn on 20/3/2024.
3. The court directed application canvassed via submissions. The Respondent filed grounds of opposition but did not file submissions to respond to appellant submissions.

Applicant's Submissions

4. The Honorable Odek Jja Relied In Edith Gichungu Koine Vs. Stephen Njagi Thoithi (2014) Eklr where in considering an application for extension of time, the court advised that several factors should be considered. They are:

“Nevertheless, it ought to be guided by consideration of factors stated in many previous decisions of this court including, but no limited to, the period of delay, the reasons for the



delay, the degree of prejudice to Respondent if the application is granted, and whether the matter raises issues of public importance, amongst others.”

5. The reason that occasioned the delay in filing the memorandum of appeal was due to the delay in the approval of the process of the same by the insurance. The approval process was delayed and later instructions to go ahead and appeal were given. As a result of that the Applicant was not able to file the memorandum of appeal within his statutory period of exercising the right to appeal.
6. It is trite that equity aids the vigilant, not the indolent. It is clear that the Applicant was and has always been vigilant. Clearly, the reason for the delay in filing the appeal was inadvertent and excusable due to the delay in approval of the same and the issuance of instructions to file the appeal after delivery of the judgment.
7. Reliance is made on, the Court Appeal case *Belinda Mural & 9 Others Vs. Amos Wainaina* (1978) eKLR, and *Shah H. Bharmal & Brothers Vs. Kumari* (1961) EA 679 where the courts held that:

“ Mistakes of a legal adviser may however amount to ‘sufficient cause under the East African Rule.’”
8. In *Human Singh & Others VS. Mistri* (1971) EA 122, it was held that:

“.....in relation to applications to this court for leave to appeal out of time, it has been held that mistakes of a legal advisor may amount to sufficient cause but not inordinate delay on his part....”
9. Despite the fact that the Applicant nor their counsels have any fault as to the delay in filing the appeal, it is submitted that the error should not be visited upon the innocent litigant whose only desire is to prosecute his matter in a just and fair manner.
10. It is submitted that, the applicant has satisfied all the factors listed by the guiding authority namely *Edith Gichungu Koine Vs. Stephen Njagi Thoithi* (2014) eKLR.
11. Respondents will not be prejudiced if our application is allowed. After all, in the spirit of good faith the applicant has proposed to furnish a bank guarantee of Kshs.,433,000.00. Ultimately, the motive is to ensure that the Applicant is not locked out. Thus it is argued that the applicant is entitled to the right to be heard. Justice should be a twoway traffic. Reliance is made on the case of *Kamlesh Mansukhalal Damki Patni VS. Director of Public Prosecution & 3 Others* (2015) eKLR, the Court of Appeal articulated that:

“It must be realized that courts exist for the purpose of dispensing justice. Judicial officers derive their judicial power from the people, or as we are wont to say in Kenya, from Wanjiku, by dint of Article 159(1) of *the Constitution* which succinctly states that “judicial authority is derived from the people and vests in, and shall be exercised by the courts and tribunals established by or under this Constitution.”

Issues, Analysis and Determination

12. On merit of application, the Applicant invokes Section 79 G of Civil Procedure Code Cap 21 where court has mandate to extend time to file appeal out of time where good and sufficient cause for not filing appeal in time is demonstrated.
13. Reliance is made on *Aviation Cargo Ltd Vs. March Freight Services* the ground in support of the application essentially is delay in filing the appeal was due to delay in approval of the same by the



insurance. The approval was delayed and later instructions to go ahead and appeal were given. Thus, the delay is said to be inadvertent.

14. Reliance is made on cases of *Belinda Mural & 9 Others Vs. Amos Wainaina* (1978) eKLR, and *Shah H. Bharmal & Brothers Vs. Kumari* (1961) EA 679. The Applicant also offers to furnish Bank guarantee of Kshs.433,000.00 decretal amount as security. The Respondent did not oppose application via affidavit but grounds of apposition which were general. No submissions were filed in rebuttal of Applicants submission.
15. I find the application has merit and grant same in the following terms:
 1. The leave appeal is granted and thus appeal memo be filed and served within 7 days.
 2. The security to be tendered will be as follows:
 - a. Half of the decretal amount shall be paid to the Decree Holder within 30 days and the other half to be secured by a deposit in court within 30 days from the date herein.
 3. Costs in the main cause.

RULING DELIVERED, DATED AND SIGNED THIS 26TH DAY OF JUNE, 2025.

JUSTICE CHARLES KARIUKI

JUDGE

