



**Co-operative Bank Housing Co-operative Society v Ruchugo (Miscellaneous Civil Application E888 of 2024) [2025] KEHC 11748 (KLR) (Civ) (31 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 11748 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
CIVIL  
MISCELLANEOUS CIVIL APPLICATION E888 OF 2024**

**LP KASSAN, J**

**JULY 31, 2025**

**BETWEEN**

**CO-OPERATIVE BANK HOUSING CO-OPERATIVE SOCIETY ..... APPLICANT**

**AND**

**JULIAH KAGURI RUCHUGO ..... RESPONDENT**

**RULING**

1. For determination Co-operative Bank Housing Co-operative Society (hereafter the Applicant) motion dated 24.09.2024 and Juliah Kaguri Ruchugo (hereafter the Respondent) Preliminary Objection dated 03.12.2024. The Applicant's motion dated 24.09.2024 seeks orders, inter alia: -
  - a. That the Applicant be granted leave to file an appeal out of time against the judgment and decree of the Co-operative Tribunal hereafter the Tribunal) in Nairobi CTC No. E715 of 2022 delivered on 30.05.2024
  - b. That the memorandum of appeal annexed hereto be deemed as duly filed and served.
  - c. That the costs of the motion be provided for.
2. The Applicant's motion is brought pursuant to Section 79G & 95 of the *Civil Procedure Act* (CPA) and is supported by an affidavit sworn by John Kimutai Ngeno of even date whose kernel is that the Tribunal on 30.05.2024 delivered judgment in Nairobi CTC No. E715 of 2022, which was not read in full as at delivery. That being aggrieved and dissatisfied by the said judgment and resultant decree of the Tribunal the Applicant filed Nairobi HC. Misc. App. No. E612 of 2024 seeking stay of execution pending appeal. He states that the Applicant only managed to obtain a copy of the judgment on 17.07.2024, to wit, by then the time within which to lodge an appeal has lapsed. He states that the delay herein is not inordinate and or occasioned by the Applicant whereas reasonable attempts were



- made to file the appeal timeously. He concludes by deposing that the Respondent will not suffer any prejudice should the motion be allowed.
3. The Respondent opposes the motion of a by way of a Preliminary Objection and a replying affidavit both dated 03.12.2024. She objects to the motion on grounds-; that the honorable Court lacks jurisdiction to hear and determine the matter being a dispute relating to land, as provided under Section 13(1) of the *Environment and Land Court Act* as read together with Article 162(2)(b) of *the Constitution* of Kenya; that Section 81 of the Co-operatives *Societies Act* as amended in the year 2004 and 2008 must be interpreted and applied on light of the provisions of Article 162(2) of *the Constitution* of Kenya promulgated in 2010 which establishes specialized Courts with exclusive jurisdiction over matter relating to land and the environment; that the honorable Court lacks jurisdiction to entertain this matter and any proceedings before it would therefore be null and void ab initio; and that the application is fatally defective and amounts to an abuse of the Court process and should be struck out with costs to the Respondent.
  4. Vide her response, the Respondent assails the Applicant's motion by deposing that despite claiming to have written several letters to Court requesting for a copy of the judgment, no explanation has been offered why the instant motion was not filed on 17.07.2024 when the alleged copy of the judgment was received. She further states that filing of an appeal was not contingent on obtaining a typed copy of the judgment as the Applicant could have taken steps to protect their right of appeal by filing an appeal based on the available information in its possession. That in totality the delay in filing an appeal is unreasonable and has not been satisfactorily explained thus illustrative of indolence on the part of the Applicant. She surmises by stating that the motion is an abuse of the Court process intended to delay her realization of the fruits of judgement as it ought to be dismissed.
  5. Directions were taken on disposal of the motion by way of written submissions, to wit, the parties duly complied. That said, the Court has duly considered the respective parties' affidavit material alongside the filed submissions.
  6. In presenting the instant motion, the Applicant has relied on among others Section 3A of the CPA which specifically reserves "the inherent power of the court "to make such orders as may be necessary for ends of justice or to prevent abuse of the process of the court", to wit, this Court's inherent powers was judiciously addressed by the Court of Appeal in *Rose Njoki King'au & Another v Shaba Trustees Limited & Another* [2018] eKLR and requires no restatement.
  7. That said before addressing the Applicant motion, it would be pertinent to dispose of the Respondent's Preliminary Objection (PO). The Respondent has challenged this Court's jurisdiction to entertain the dispute pursuant to Section 13(1) of the *Environment and Land Court Act*, Section 81 of the Co-operatives *Societies Act* as read with Article 162(2)(b) of *the Constitution*. As to the nature of a PO the same was settled in the celebrated decision of *Mukisa Biscuits Manufacturing Company Ltd v. West End Distributors* (1969) EA 696 to consists of a point of law which has been pleaded or which arises by clear implication out of pleadings, and which if argued as a preliminary point, will dispose of a matter. See also: *Oraro v Mbaja* [2005] KLR 141, *Kigwor Company Limited v Samedy Trading Company Limited* [2021] eKLR and *Mulemi v Angwenye & Another* (Civil Appeal 170 of 2016) [2021] KECA 214.
  8. However, before progressing further on the Respondent's PO, it must be emphasized that the Applicant's motion that is for consideration concerns whether leave ought to be granted to file an appeal out of time as against the judgement and decree of the Tribunal. Therefore, at this juncture the Court cannot concerning itself with the Court's jurisdiction to entertain an appeal that is yet to be filed and or competency of an intended appeal. Such a question as to competency of an appeal is preserved



for the appellate Court, to wit, the same cannot be canvassed at this interlocutory stage of seeking leave. To proceed and address the competency of an intended appeal would be to usurp the appellate Court's jurisdiction. As a consequence, this Court will refrain from addressing the said contestation for the forestated reservation and accordingly dismiss the Respondent's objection.

9. Having dispensed with the above, the power of the Court to enlarge the time for filing an appeal out of time is expressly donated by Section 79G of the CPA, as well as generally, by Section 95 of the Act. That said, it is trite that for leave to be granted, an applicant is obligated to sufficiently explain to the satisfaction of the Court the cause of the delay. In *Thuita Mwangi v Kenya Airways* [2003] eKLR the Court reiterated the rendition in *Mutiso v Mwangi* [1997] KLR 630 as follows;

“It is now well settled that the decision whether or not to extend the time for appealing is essentially discretionary. It is also well settled that generally the matters which this court takes into account in deciding whether to grant an extension of time are; first, the length of delay; secondly, the reason for the delay; thirdly (possibly) the chances of appeal succeeding if the application is granted; and fourthly, the degree of prejudice to the Respondent of the application is granted.”

See also: - *Salat v Independent Electoral and Boundaries Commission & 7 others* [2014] KESC 12 (KLR)

10. The circumstances that led to delay in filing the Applicant's intended appeal within time have been explained in the Applicant's affidavit with a retort being advanced in the Respondent's replying affidavit. A perfunctory review of the Applicant's affidavit material and annexures thereto confirms that the impugned judgment of the Tribunal was delivered on 30.05.2024 (Annexure JKN-1 & JKN-4) whereafter a request for certified copy of the judgment was lodged on 04.06.2024 (Annexure JKN-2). On the face of the impugned judgment it can be noted thereon that the same was certified by the Tribunal on 17.07.2024, with the same coinciding with date when the Applicant purports that it received a copy of the judgment. The Respondent has rightfully contended that despite claiming to have received the copy of the judgment on 17.07.2024 why it took the Applicant until 29.09.2024 to lodge the instant motion. While the duration between 30.05.2024 and 17.07.2024 was accounted for by dint of Annexure JKN-2, no explanation has been offered for the said delay between 17.07.2024 and 29.09.2024.
11. Further, while in part the Court agrees with the Respondent's contestation that the Applicant need not to have been in possession of the impugned judgment, noting that it was presented when the same was delivered, I might add the Applicant could have filed its memorandum of appeal towards compliance purposes with Section 79G of the CPA and later availed itself to the provisions of Order 42 Rule 3 of the CPR, on amendment of the memorandum of appeal, upon receipt of a certified copy of the impugned judgment.
12. As observed in *Mutiso* (supra), the length of delay and reason for delay are key towards unlocking this Court's discretion. Here the unexplained delay in presenting the instant motion is more than two (2) months with no explanation being offered for the same. With no explanation, it would be arduous not to find that the delay herein is insufficiently explained and inordinate. The forestated brings to mind the rendition of *Makhandia JA in Patrick Wanyonyi Khaemba v Teachers Service Commission, Board*



of Management, Kapletingi Mixed Day Secondary School & Francis Tanui [2019] KECA 112 (KLR), wherein he observed that -

“The law does not set out any minimum or maximum period of delay. All it states is that any delay should be explained, hence a plausible and satisfactory explanation for delay is the key that unlocks the court’s flow of discretionary favour.

13. Ultimately, a motion of this nature principally stands or falls on the demonstration of “good and sufficient cause” by an applicant; it is what unlocks this Court’s discretion. The Court agrees with the Respondent that the Applicant has not demonstrated “good and sufficient cause”. Notably, in the period between 17.07.2024 and 24.09.2024. Clearly, in these circumstances, granting the prayer for leave might only work prejudice against the Respondent and appear to condone indolence.
14. Nevertheless, while the Court is alive to the emphasis in Vishva Stone Suppliers Company Limited v RSR Stone (2006) Limited [2020] eKLR concerning the importance of the right of appeal, the right is not absolute and must be balanced against the Respondent’s corresponding right to have the dispute determined expeditiously. The prayer for leave to appeal out of time has not been justified. In the circumstances, the Court finds no merit whatsoever in the motion dated 24.09.2024. The motion is hereby dismissed with costs to the Respondent.

**DATED, SIGNED AND DELIVERED VIRTUALLY THIS 31<sup>ST</sup> DAY OF JULY 2025**

**LINUS P. KASSAN**

**JUDGE**

In the presence of:-

Atieno for Applicant

No appearance for Respondent

Carol – Court Assistant

