



REPUBLIC OF KENYA



**Maiwa v Bett (Civil Appeal E023 of 2025) [2025] KEHC 11507 (KLR) (31 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 11507 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KERICHO  
CIVIL APPEAL E023 OF 2025**

**JK SERGON, J**

**JULY 31, 2025**

**BETWEEN**

**MARY CHEPKEMOI MAIWA ..... APPLICANT**

**AND**

**JOHN KIPRUTO BETT ..... RESPONDENT**

**RULING**

1. The application coming up for determination is a chamber summons dated 5th March, 2025 seeking the following orders;
  - (i) Spent
  - (ii) That this honourable court be pleased to grant an order that the memorandum of appeal lodged on 5th March, 2025 be deemed to have been duly filed.
  - (iii) That in the alternative and absolutely without prejudice to prayer (ii), this honourable court be pleased to grant the applicant leave to appeal out of time against the ruling and order of the subordinate court delivered on 19th November, 2024.
  - (v) That the necessary directions do issue.
2. The application is based on grounds on the face of it and the supporting affidavit of Mary Maiywa, the Applicant/Appellant.
3. She avers that she instructed her counsel on record, the firm of Bett & Company to lodge an application seeking revocation of grant of letters administration that had been made to one Joel Kipruto Bett on 22nd January, 2019 and confirmed on 26th November, 2019 on grounds that the same was obtained fraudulently and by means of untrue allegations of fact essential in a point of law to justify the grant. The petitioner failed to disclose to the court that being an adoptive daughter of the deceased, she was entitled to a share of the estate.



4. She avers that she is aware the matter proceeded for hearing and was slated for mention to confirm filing of written submissions and to fix a ruling date. She avers that her counsel on record did confirm that they attended court on the material day and that they had duly filed submissions and the ruling was to be delivered on 12th November, 2024
5. She avers that on 12th November, 2024 she visited counsels' offices and was informed that the court was not sitting and therefore a notice would be issued indicating when the ruling would be delivered.
6. She avers that on 25th February, 2025 she visited counsel' offices to establish the status of the matter and she as shocked to learn that the ruling had been delivered on 19th November, 2024 albeit without notice and that the magistrate had dismissed her objection on the premises that she had not proven that she was the adopted daughter and dependent of the deceased.
7. She avers that she is aggrieved with the said decision and is desirous of filing and appeal, however, she had been informed by the counsel on record that the time for filing an appeal has since lapsed.
8. She avers that the delay in filing the appeal was not deliberate but was occasioned by the fact that she was not aware that the ruling had been delivered albeit without notice and that she has applied for certified copies of the proceedings and ruling with a view of preparing the record of appeal.
9. She avers that she has an arguable appeal with high chances of success and attached a copy of the memorandum of appeal and further that if the instant application is not allowed she will suffer undue prejudice.
10. The Respondent filed grounds of opposition to the said application citing that the instant appeal is incompetent and unmerited as the same was filed out of the time frames provided within the law.
11. The matter came up for inter partes hearing, the learned counsel for the applicant stated that they served the application upon the respondent whereas the learned counsel for the respondent stated that they filed grounds of opposition to the said application. The court directed parties to file their submissions which this court has duly considered.
12. The applicant in her submissions cited the provisions of section 79 (G) of the *Civil Procedure Act* CAP 21 and maintained that she had offered a plausible explanation for the delay in filing the instant appeal, to wit that the ruling was delivered without notice to her and/or her counsel on record. The applicant cited the case of *Francis Likhabila v Barclays Bank of Kenya* [2020] eKLR where it was held that; "Even where an appeal is not filed within time, my considered view is that such an appeal is not an automatic candidate for striking out. In appropriate cases, the court can exercise its discretion under the proviso to Section 79 G of the *Act* or can invoke its inherent power under Section 3 A of the Act and admit the appeal out of time if the ends of justice so require and if doing so will assist the court in achieving the overriding objective of the *Civil Procedure Act*."
13. Having considered the pleadings and submissions by the parties this court finds that the issue (s) for determination are whether to enlarge the time to file the intended appeal out of time.
14. On the issue as to whether to enlarge time to lodge the appeal out of time, the operative section of the law is section 79G of the *Civil Procedure Act* provides that: "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." In the case of *Paul Musili*



*Wambua v Attorney General & 2 others* [2015] eKLR, the Court of Appeal in considering an application for extension of time and leave to file Notice of Appeal out of time stated as follows: "...it is now well 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 whims or caprice. In general, the matters which a court takes into account in deciding whether to grant an extension of time are; the length of the 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." Regarding the length of delay, it is evident from the pleadings on record herein that the ruling that the applicant is seeking to appeal against was delivered on 19th November, 2024. The instant application was filed on the 5th March, 2025, occasioning a delay of slightly under three months and the applicant submitted that the delay in lodging the appeal was occasioned because she was not privy to the ruling of the trial court which was delivered without notice to her and/or her advocates on record. The applicant contended that the intended appeal raises triable issues to wit the fact that she is an adoptive daughter of the deceased and therefore entitled to a share of the estate of the deceased and has high chances of success. In the circumstances, I am inclined to allow the applicant leave to file the intended appeal noting that the delay is not inordinate and that the applicant has offered a plausible explanation for the delay in lodging her appeal.

15. I hereby allow the chamber summons dated 5th March, 2025 giving rise to issuance of the following Orders:-
- (i) Leave is granted to the applicant to file an appeal out of time against the ruling and order of the subordinate court delivered on 19th November, 2024 within 10 days from the date hereof.
  - (ii) Costs to abide in the outcome of the appeal.

**DELIVERED, SIGNED AND DATED AT KERICHO THIS 31ST DAY OF JULY, 2025.**

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**J. K. SERGON**

**JUDGE**

In the Presence of:-

C/Assistant – Rutoh

Miss Sang for the Applicant

No Appearance for the Respondent

