



Mwangi v Dhanjal Investments Limited t/a Travellers Beach Hotel (Civil Appeal E078 of 2025) [2025] KEHC 11529 (KLR) (31 July 2025) (Ruling)

Neutral citation: [2025] KEHC 11529 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
CIVIL APPEAL E078 OF 2025**

**G MUTAI, J
JULY 31, 2025**

BETWEEN

POLLY NYAGUTHII MWANGI APPELLANT

AND

**DHANJAL INVESTMENTS LIMITED T/A TRAVELLERS BEACH
HOTEL RESPONDENT**

RULING

1. Before this court is a notice of motion application dated 11th April 2025 vide which the appellant/applicant seeks the following orders:-
 - a. Spent;
 - b. That the honourable court be pleased to extend time for filing and service of Memorandum and deem the Memorandum of Appeal lodged on 14th March 2025 and served on the respondent on 14th March 2025 as properly filed; and
 - c. That costs incidental to this application abide the result of the said appeal.
2. The application is premised on the grounds stated therein and also on the supporting affidavit of the appellant/applicant. She stated in the said affidavit that the trial court, in Civil Suit No. SRMCC 3764 of 2024, entered judgment in her favour; however, she is dissatisfied with the judgment regarding the quantum of damages awarded for the loss of earning capacity. She prays, in the grounds set out in the memorandum of appeal, that the said judgment can be set aside. The Memorandum of Appeal was filed eleven days out of time due to a delay in obtaining a copy of the judgment.
3. She further stated that she has an arguable appeal with high chances of success and urged the court to allow the application. Ms Mwangi averred that the respondent will not suffer any prejudice if the order sought is granted.



4. The respondent, in response, filed grounds of opposition dated 28th April 2025, vide which it opposed the application on the following grounds:-
 - a. That the applicant has not given any good or sufficient cause for the delay in filing the appeal within the time provided under Section 79G of the [Civil Procedure Act](#);
 - b. That the application is an afterthought, an abuse and misuse of the judicial process;
 - c. That the applicant did not serve the Respondent with the Memorandum of Appeal within seven days of filing as provided for in Order 42 Rule 12 of the [Civil Procedure Rules](#);
 - d. That the memorandum of appeal does not raise pertinent issues of law or fact on the face of it; and
 - e. That the Applicant has not met the threshold set by law and precedent on extension of time to file an appeal.
5. The respondent urged the court to dismiss the application with costs.
6. The applicant filed a supplementary affidavit sworn on 28th May 2025, opposing the grounds of opposition. She reiterated her position, stating that the appeal is not an afterthought or an abuse of judicial process, as it raises pertinent issues of law and fact. She urged that it is only after the appeal has been admitted that the Registrar shall notify the appellant, who shall serve the memorandum of appeal on the respondent. She urged the court to allow the application.
7. The application was canvassed by way of written submissions. The applicant, through her advocates, G. A. Okumu & Co. Advocates, filed her written submissions dated 3rd June 2025.
8. Counsel relied on Article 50, Article 159(2)(d) of the [Constitution](#), Section 79G of the [Civil Procedure Act](#) and Order 50 Rule 6 of the [Civil Procedure Rules](#) and submitted that the applicant must satisfy the court that she has good and sufficient cause for filing the appeal out of time. Further, the delay in filing the appeal by the applicant was occasioned by circumstances not within the applicant's control, and particularly the delay in obtaining the judgment. Counsel urged the court to find that the delay does not go to the substance of the matter and allow the application. Counsel submitted that the applicant has an arguable appeal with high chances of success and that the respondent will suffer no prejudice if the application is allowed.
9. In conclusion, counsel submitted that the appellant has established a sufficient cause for filing the appeal out of time and urged the court to allow the application, upholding the right to a fair hearing without undue regard to the procedural technicalities.
10. The respondent, on the other hand, through its advocates, filed its written submissions dated 30th June, 2025. Counsel submitted on one issue, namely, whether the applicant has demonstrated sufficient cause to warrant the exercise of this honourable court's discretion under section 79G of the [Civil Procedure Act](#).
11. Counsel submitted that the applicant has tendered no substantive evidence to show that the delay was due to circumstances beyond her control. It was urged that the respondent is entitled to enjoy the benefits of a regular and valid judgment delivered by a competent court, and thus allowing the appeal to proceed out of time will not only prolong litigation unnecessarily but also prejudice the respondent's right to finality and quiet enjoyment of its legal rights.



12. Counsel further submitted that the unjustified late filing of the memorandum of appeal by the applicant demonstrated bad faith, and the application to file the same out of time is an attempt to manipulate judicial discretion.
13. In conclusion, counsel urged the court to find that the appeal is devoid of merit and also that the respondent will suffer prejudice if the application is allowed. Counsel urged the court to strike out the application with costs.
14. I have considered the application, the responses therein and the rival submissions by both counsel and the issue that emerges for determination is whether the orders sought should issue.
15. Section 79G of the *Civil Procedure Act* states: -

“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 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.”

16. The Court of Appeal, in the case of *Murimi v Kabiru & 2 others (Both as the Chairman and Treasurer of Kagaki Irrigation Water Self Help Group)* [2025] KECA 564 (KLR), stated that:-

“It is clear that the discretion to extend time is indeed unfettered. It is incumbent upon the applicant to explain the reasons for delay in making the application for extension and whether there are any extenuating circumstances that can enable the Court to exercise its discretion in his favour. The applicant must satisfy that there exists reasonable explanation for the delay; that the delay is not unreasonable or inordinate and that he has an arguable appeal...”

17. The judgment herein was delivered on 3rd February 2025. The appellant had 30 days to file the memorandum of appeal. The memorandum of appeal was filed on 14th March 2025, which was beyond the 30-day period for filing an appeal stipulated in the law. The applicant has argued that the delay in obtaining a copy of the judgment was beyond her control; however, she has not tendered any evidence to support this claim.
18. It is therefore my view that the appellant/applicant has not given sufficient reasons and or tendered any evidence to buttress her contention that there is good and sufficient cause to grant the prayers sought. I, however, after reviewing the grounds in the memorandum of appeal, am of the view that she has an arguable appeal and that it would be in the greater interests of justice to allow the application.
19. On costs, I order that the costs abide the outcome of the appeal.
20. It is so ordered.

DATED AND SIGNED IN MOMBASA, THIS 31ST DAY OF JULY 2025. DELIVERED VIRTUALLY THROUGH MICROSOFT TEAMS.

GREGORY MUTAI

JUDGE

In the presence of:-



Ms Otieno, holding brief for Ms Okumu, for the Appellant /Applicant;
Mrs Otieno, holding brief for Dr Aoko, for the Respondent; and
Arthur – Court Assistant.

