



**Mugo v Nabea (Miscellaneous Civil Application E033 of 2024)
[2024] KEHC 6461 (KLR) (30 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 6461 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
MISCELLANEOUS CIVIL APPLICATION E033 OF 2024**

TW CHERERE, J

MAY 30, 2024

BETWEEN

PETER KINYUA MUGO APPLICANT

AND

GILBERT KITHERA NABEA RESPONDENT

RULING

1. The notice of motion dated 21st February, 2024 arises from the judgment in Maua CMCC 131 of 2022 which was delivered on 14th August, 2023 for KES. 332,000/- in favour of the Respondent as against the Applicant.
2. Applicant seeks stay of execution of the judgment and leave to appeal out of time. The motion is supported by an affidavit sworn on 21st February, 2024 by Vivian Kibathi who describes herself as legal officer for APA Insurance Ltd, the Applicant's insurer who avers that they are desirous of appealing the judgment.
3. By replying affidavit sworn on 15th April, 2024, Respondent opposed the application on the ground that it is designed to delay him from enjoying the fruits of the judgment.
4. I have considered the notice of motion in the light of affidavits on record and the issues for determination is whether Applicant has made out a case for leave to appeal out of time and stay of execution of judgment delivered on 14th August, 2023.
5. The instant application was filed on 22nd February, 2024 slightly over 6 months after delivery of the impugned judgment.
6. Under Section 79G of *Civil Procedure Act*, an appeal from a subordinate court to the high court should be filed within a period of 30 days from the date of the decree or order appealed against provided that an



appeal shall 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.

7. Having approached over 6 months after the impugned judgment was delivered, the onus is on the Applicant to demonstrate that the delay was reasonable, justified and that the Respondent will not suffer any prejudice if the order is not granted.
8. The principles that govern the exercise of discretion in an application for extension of time are well known. In *Githuaka v Nduriri* [2004] 2 KLR at page 68 and in the oft-cited case of *Leo Sila Mutiso v Rose Hellen Wangari Mwangi* Civil Application No. Nai. 255 of 1997 [1999] 2 EA 231 which was a decision of the Court of Appeal in which the judge stated 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 in general, the matters which this court takes into account in deciding whether to grant an extension of time are: first, the length of the delay; secondly, the reason for the delay; thirdly (possibly), the chances of the appeal succeeding if the application is granted; and, fourthly, the degree of prejudice to the respondent if the application is granted”.

9. In *Andrew Kiplagat Chemaringo v Paul Kipkorir Kibet* [2018] eKLR, the Court of Appeal stated that:

“The law does not set out any minimum or maximum period of delay. All it states is that any delay should be satisfactorily explained. A plausible and satisfactory explanation for delay is the key that unlocks the court’s flow of discretionary favour. There has to be valid and clear reasons, upon which discretion can be favourably exercisable.”

10. In this matter, the Applicant’s insurer stated that there was a mix-up in its office but fails to explain the nature of mix-up that existed for over 6 months.
11. The foregoing notwithstanding, driving a party from the seat of justice without giving them a chance to ventilate their case is a draconian measure which should be exercised cautiously.
12. Consequently, I find that no prejudice will be occasioned if the orders sought are granted on the following terms:
 1. Applicant is granted leave to appeal the judgment in Maua CMCC 131 of 2022 out of time
 2. The Applicant shall file and serve the intended appeal within 45 days from today’s date
 3. There shall be stay of execution of judgment and decree in Maua CMCC 131 of 2022 upon the Applicant depositing the total judgment sum with the court
 4. Costs shall abide the outcome of the intended appeal

DELIVERED AT MERU THIS 30TH DAY OF MAY 2024

WAMAE. T. W. CHERERE

JUDGE

Appearance

Court Assistant - Morris Kinoti

For Applicant - Mr. Kariuki for Mithega & Kariuki Advocates

For Respondent - Mr. Ngunjiri for Ngunjiri Michael & Co. Advocates

