



REPUBLIC OF KENYA



Atunga v Rasungu & 2 others (Environment & Land Miscellaneous Case E016 of 2023) [2025] KEELC 3003 (KLR) (25 March 2025) (Ruling)

Neutral citation: [2025] KEELC 3003 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND MISCELLANEOUS CASE E016 OF 2023**

MD MWANGI, J

MARCH 25, 2025

BETWEEN

CHRISTINE MOCHECHE ATUNGA APPLICANT

AND

CHARLES NYATUNDO RASUNGU 1ST RESPONDENT

CHIEF LAND REGISTRAR 2ND RESPONDENT

THE HON. ATTORNEY GENERAL 3RD RESPONDENT

(In respect of the Notice of Motion dated 3rd October, 2023 brought under Section 16A (1) and (2) of the Environment and Land Court Act, Sections 1A, 1B, 3A, 63(e), 79G and 95 of the Civil Procedure Act, Order 51 Rule 1 of the Civil Procedure Rules and Article 159(2)(d) of the Constitution)

RULING

Background

1. The Applicant through a Notice of Motion dated 3rd October, 2023 prays that this court grants her leave to file an appeal out of the statutory time against the judgment and resulting decree of Hon. E.M Kagoni delivered on 10th August, 2023 in Kajiado CMELC No. E009 of 2020: Christine Mochache Atunga v Charles Nyatundo Rasugu & 2 Others.
2. The Application is premised on the grounds on the face of it and the supporting affidavit of Christine Mochache Atunga of 3rd October, 2023. In summary, she deposes that being aggrieved by the judgment and resultant decree of Hon. E.M Kagoni dismissing her suit in its entirety with costs, she intends to prefer an appeal against it. She further avers that through a letter dated 10th August, 2023, she requested the trial court for certified copies of the judgment, resultant decree and typed proceedings to enable her



lodge the appeal. However, she only received a copy of the uncertified judgment on 14th September, 2023, two weeks after the lapse of the statutory timelines for lodging an appeal.

3. The Applicant asserts that the delay in filing the intended appeal is not inordinate and is excusable because it was occasioned by the delay in the issuance of a certified copy of judgment. According to the Applicant, the intended appeal is meritorious as it raises several issues for determination as demonstrated in the draft memorandum of appeal attached to the application. She further states that if leave is not granted, then she will suffer substantial loss.

Response by the 1st Defendant/ Respondent

4. The 1st Respondent through his submissions dated 3rd September, 2024 makes reference to his grounds of oppositions dated 7th November, 2023 whose existence has been denied by the Applicant. The 1st Respondent argues that the application is an afterthought because no valid reasons have been given to explain the delay. This is because the Environment and Land Act as well as the Civil Procedure Act does not require any party appealing from the subordinate court to this court to first obtain proceedings before filing an appeal. The 1st Respondent further submits that the Applicant has not provided any evidence to prove she received the judgment on 14th September, 2023.

Directions

5. The Application was canvassed through written submissions pursuant to the directions issued on 29th November, 2023.

Issues for determination

6. Upon careful analysis of the Notice of Motion as well as parties' submissions, the only issue for determination is whether the Applicant has established sufficient basis for the grant of the orders sought.

Determination

7. Section 79G of the Civil Procedure Act which I hereby reproduce makes provision regarding the timelines for filing an appeal to this court from the subordinate court.

“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.”

8. The above provisions are also replicated in Section 16A of the Environment and Land Court Act (CAP8D) which provides as follows;

“16A. All appeals from subordinate courts and local tribunals shall be filed within a period of thirty days from the date of the decree or order appealed against in matters in respect of disputes falling within the jurisdiction set out in section 13(2) of the Environment and Land Court Act (Cap. 8D), provided that in computing time within which the appeal is to be instituted, there shall be excluded such time that the subordinate court or tribunal may



certify as having been requisite for the preparation and delivery to the appellant of a copy of the decree or order.

(2) An appeal may be admitted out of time if the appellant satisfies the court that he had a good and sufficient cause for not filing the appeal in time.”

9. In *Salat -vs- Independent Electoral and Boundaries Commission & 7 others* (Application 16 of 2014) [2014] KESC 12 (KLR) (4 July 2014) (Ruling), the Supreme Court pronounced the following underlying principles to be considered by courts in exercise of the discretion to extend time;

1. Extension of time is not a right of a party. It is an equitable remedy that is only available to a deserving party at the discretion of the Court;
2. A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the court
3. Whether the court should exercise the discretion to extend time, is a consideration to be made on a case to case basis;
4. Whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the Court;
5. Whether there will be any prejudice suffered by the respondents if the extension is granted;
6. Whether the application has been brought without undue delay; and
7. Whether in certain cases, like election petitions, public interest should be a consideration for extending time.

10. Likewise, the Court of Appeal in *Paul Musili Wambua v Attorney General, Association of Human Resource Practitioners of Kenya & Commission on Administrative Justice* (Civil Application 131 of 2015) [2015] KECA 471 (KLR) (Civ) (31 July,2015) (Ruling) pronounced itself as followings with regards to extension of time for lodging an appeal;

“.....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.”

11. The judgment of the trial court which is the subject of this application and intended appeal was delivered on 10th August, 2023. Through a letter dated 10th August, 2023, the Applicant through her counsel on record Nyaanga & Mugisha Advocate wrote to the Kajiado Chief Magistrate’s Court requesting for the judgment and typed proceedings to enable them lodge an appeal. The letter was received at the court on 24th August, 2023. In support of the application, the Applicant has filed the receipt dated 24th August, 2023 demonstrating payment for a copy of the judgment and proceedings.

12. The Applicant contends that as at the time they received a copy of the judgment on 14th September, 2023, the timelines for lodging the appeal had already lapsed. This is because the appeal ought to have been filed by 11th September, 2023.



13. The application which is the subject of this ruling was filed on 19th October, 2023. This was approximately 38 days from the date the Applicant ought to have filed her appeal. The Applicant avers that she will suffer prejudice if she is not granted the prayers sought. According to the Applicant, the draft memorandum of appeal demonstrates that the appeal raises several issues which ought to be determined on their merits. The Applicant has submitted that the Respondent will not be prejudiced nor suffer any irreparable harm because the trial court dismissed the suit with costs. It is further argued that evidence presented before the trial court as well as the arguable grounds of appeal indicates that the appeal has a likelihood of success. At this juncture, it is not the business of this court to decide whether the appeal will successful or not. A careful perusal of the memorandum of appeal indicates that it is premised on legal issues.
14. Article 159(2) (d) of *the Constitution* obligates courts to administer justice without undue regards to procedural technicality. This principle was expounded by the Court of Appeal in *Kamlesh Mansukhalal Damji Pattni v Director Of Public Prosecutions & 3 others* [2015] KECA 690 (KLR) where it pronounced itself as follows;

“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.” Judicial Officers are also State officers, and consequently are enjoined by Article 10 of *the Constitution* to adhere to national values and principles of governance which require them whenever applying or interpreting *the Constitution* or interpreting the law to ensure, inter alia, that the rule of law, human dignity and human rights and equity are upheld. For these reasons, decisions of the Courts must be redolent of fairness and reflect the best interest of the people whom the law is intended to serve. Such decisions may involve only the rights and obligations of the parties to the litigation inter se (and hence only the parties’ interests) and while others may transcend the interest of the litigants and encompass public interest. In all these decisions, it is incumbent upon the Court in exercising its judicial authority to ensure dispensation of justice as this is what lives up to the constitutional expectation and enhances public confidence in the system of justice.”

15. Considering the application herein in its totality, I am persuaded that the Applicant is deserving of the discretion of this court to extend time. Accordingly, the Notice of Motion dated 3rd October, 2023 is hereby allowed. The Applicant is directed to file and serve the memorandum of appeal within 14 days of this ruling.
16. It is so ordered.

DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 25TH DAY OF MARCH 2025

M.D. MWANGI

JUDGE

In the virtual presence of:

Mr. Rotich for the Applicant

N/A by the Respondents



Court Assistant: Mpoye

